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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 334

UNITED STATES OF AMERICA, *Appellant,*

vs.

SHORELINE COOPERATIVE APARTMENTS, INC., A CORPORATION; J. M. NICHOLSON; ROBERT R. LUMSDEN; NATHAN SUCHERMAN; MILTON TIRSLEY; FRANK FERRARO; HELEN FERRARO; JOHN J. CHALMERS; SAMUEL SILVERMAN; ARTHUR J. CASEY; MAURICE LIPKIN; CHARLES E. KOCH; CHARLES H. BRANDT; CLIFFORD CULLODEN; JEROME A. CUTLER; HARRY TARLER; EUGENE B. FEINGOLD; HERBERT S. KOHN AND IRVING KALLICK, *Appellees.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF FOR APPELLEES ROBERT R. LUMSDEN, ARTHUR J. CASEY, CLIFFORD CULLODEN AND IRVING KALLICK.

Opinion Below.

The opinion of the District Court (R. 9) has been reported in 84 F. Supp. 660.

Jurisdiction.

The judgment of the District Court was entered July 26, 1949 (R. 19). The petition for appeal was filed on August 23, 1949, and the appeal was allowed on August 23, 1949 (R. 21). Probable jurisdiction was noted by this Court of October 17, 1949. The jurisdiction of this Court is conferred by Section 1252 of Title 28 of the United States Code (Act of June 25, 1948, c. 646, 62 Stat. 928, 28 U. S. C. 1252).

Questions Presented.

The primary questions presented are:

1. Whether the "local option" provisions of Section 204 (j) of the Housing and Rent Act of 1949, unconstitutionally delegate the legislative power of Congress to state and local officials.

2. Whether Section 204 (j) is separable from the remainder of the Act.

Other Constitutional Objections.

3. Whether the Housing and Rent Act of 1949 is a constitutional exercise of the war powers of Congress.

4. Whether the eviction provisions of Section 209, or the "fair net operating income" provisions of Section 204 (b) (1), or other provisions of the Housing and Rent Act of 1949, unconstitutionally delegate the legislative power of Congress to the Housing Expediter.

5. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment of the Constitution by denying to landlords a fair return on their investments.

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6. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment of the Constitution by denying to the landlord an opportunity to be heard.

7. Whether the Housing and Rent Act of 1949 violates the Fifth Amendment to the Constitution by reason of various arbitrary and discriminatory provisions.

Statute and Regulation Involved.

The Housing and Rent Act of 1949, Public Law 31, 81st Cong. 1st sess., March 30th, 1949, primarily the sections referred to under questions presented above. Pertinent portions of the statute are printed at appropriate places through the body of the brief.

SUMMARY OF ARGUMENT.

I.

A. Section 204 (j) of the Rent Act of 1949 is unconstitutional because it attempts a delegation of legislative power to states, legislatures, municipalities, and governors without adequate standards. This section does not constitute a relinquishment to the states of authority over a subject over which they have concurrent power. The assumption that the states normally have the power to regulate rents is fallacious. The states normally have no such power. Furthermore, such attempted delegations involve very serious state constitutional problems, in that they attempt to confer upon municipalities, powers which they do not have under state law; upon governors powers of vetoing municipal action which they do not enjoy under state constitutions; and involve other serious problems of special legislation and discrimination.

B. None of the cases cited by the Government in its brief is analogous to the instant situation. The power sought to be delegated in the instant case is of a character which cannot be delegated. The attempt at delegation does not involve in any sense an attempted accommodation of relations between the federal and state governments, but rather a situation of abdication of federal power to the states. The power attempted to be delegated would in every instance operate in derogation of the federal power and, rather than implementing the policy of the federal legislation, in each instance serve only to nullify it.

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II.

Section 204 (j) is not separable from the balance of the Act, and accordingly the entire Act must fall. In its 1949 form, the Rent Act is simply a national local option statute, cast in negative form, permitting the states and various areas thereof to adopt rent control by inaction. Obviously if the statute were cast in the affirmative form of a local option statute, there could be no doubt that invalidation of the local option provisions must vitiate the entire act. Since the Court is concerned with substance rather than form the same result must be reached and section 204 (j) be held inseparable.

III.

Other Constitutional Objections.

1.

At the time of the enactment of the Rent Act of 1949 the so-called "war emergency" had terminated and the transition from war to peace had been effected. The present state of war is purely technical. At the time of the enactment of the Rent law of 1949 and for some time prior thereto, there was actually no housing shortage but merely a serious maldistribution of population in the available housing units.

2.

The Rent Act of 1949 is invalid by reason of unconstitutional delegations of legislative power to the Housing Expediter, including among others the delegation to him under Section 209 to prescribe not only the detail

but the policy of the law with reference to the matter of evictions; and the attempt at delegation to him of the policy as well as detail of determining "fair net operating income" under Section 204 (b) (1).

3 and 4.

The Rent Act of 1949 is invalid as denying to landlords the fair rate of return on fair investment guaranteed by the due process provision of the Fifth Amendment to the Constitution. Certainly the owner of rental properties who has made no dedication of his property to the public use, cannot be regarded as enjoying a less favorable position with reference to the constitutional right to return on his investment that that enjoyed by a public utility which has made a voluntary dedication of its property to the public use. The requirement of fair return on fair investment has been consistently and uniformly sustained by this Court. The "fair net operating income" provision of Section 204 (b) (1) does not meet the requirement.

5 and 6.

The Rent Act of 1949 is repugnant to the Fifth Amendment to the Constitution in that landlords are given no opportunity to be heard, either administratively or in court.

7.

The Rent Act of 1949 deprives landlords of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, in that it arbitrarily discriminates in favor of newly created housing units, which are entirely decontrolled, and against existing housing units which remain controlled; in that

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it discriminates in favor of certain property owners whose tenants voluntarily agreed to increases in their rentals up to 15% and against other property owners whose tenants refused so to do; in that it discriminates in favor of certain property owners who had comparatively high rental rates in effect on March 1, 1942 and against property owners who had comparatively low rental rates in effect on that day; in that it discriminates arbitrarily in favor of so-called apartment hotel owners by fixing their maximum rentals as of March 1, 1949, after a period of decontrol and adjustment of rentals to present economic conditions, and against owners of unfurnished units, furnished units, and rooming houses, whose maximum rentals are still fixed as of March 1, 1942; and in that it discriminates in favor of owners of so-called apartment hotels located in cities of less than 2,500,000 inhabitants and against the owners of such hotels in Chicago and New York City.

IV.

These appellees concur and join in the argument of appellant that this case is not moot.

ARGUMENT.

I.

SECTION 204 (j) IS UNCONSTITUTIONAL.

Introductory Analysis.

Section 204 (j) is unconstitutional as involving an improper attempt on the part of Congress to delegate its legislative powers. This is true in two principal respects: (1) That the nature of the power, i. e., war power, is such that it cannot be delegated to state and local authorities, even when accompanied by adequate standards to control its exercise; and (2) that the attempted delegation in question is so lacking in standards as to constitute a virtual abdication of legislative power to the unbridled discretion of the states. The court below has aptly characterized the attempted delegation as follows (R. 13):

> This is the first case that has come to my attention in which Congress has attempted to leave it to other legislative bodies arbitrarily to determine whether or not they would be within or without the union so far as an Act of Congress is concerned—an Act which must depend upon the war power if it has any foundation at all. I can see no difference between this situation and one in which Congress should pass a selective service law with the provision that any State which doesn't care to send soldiers may pass a law and say they did not choose to be involved, or an Interstate Commerce Act with the provision that any State that chose not to be governed thereby could declare itself out. I can see no reasonable reason to believe that an Act of Congress under its war powers can contain any such provisions as might make it inoperative at the option of any or all of the various states or subdivisions of States, by their arbitrary action and without guides, standards or specifications of facts.

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Petitioner contends (B. 12) that the validity of Section 204 (j) should not depend upon the application of the delegation doctrine; that

> Although in form a delegation, the section is in reality an answer to a practical problem in intergovernmental relations—how the United States *should turn back to the States a subject which, apart from the war emergency, normally would be a matter for state rather than federal control.* (Italics supplied.)

This entire line of argument is based upon the totally false assumption implicit in the italicized portion of the last quotation, i. e., that rent control is a normal rather than extraordinary function of government. Here petitioner speaks of "turning back" to the States the power to control rents. Later (B. 26) petitioner speaks of "relinquishment of control of rents to the states" and remarks casually that "the control of rents normally falls within the police powers of the states." The line of assumption throughout is obviously false. No government, either federal or state, has "normally" any power to control rentals of privately owned dwellings, and enjoys such powers only under extraordinary circumstances and by virtue of the existence of an emergency. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Bowles* v. *Willingham*, 321 U. S. 503; *Woods* v. *Miller Co.*, 333 U. S. 138.

Section 204 (j) does not constitute an attempt to adjust the respective spheres of activity of the federal and state governments, or an attempt to withdraw from a field of concurrent jurisdiction and leave such field to the states. It is an attempt to delegate to the states and to the various local governments within the states, a power which they do not have—hence, a true delegation, which must stand or fall as such. As will be indicated more specifically

hereinafter, the cases cited by petitioner involve situations not analogous to that of Section 204 (j).

A. The Standards Contained in Section 204 (j) Are Clearly Inadequate.

The obvious inadequacy of the so-called "standards" contained in Section 204 (j) is emphasized by examination of the technique employed by petitioner to demonstrate their adequacy. Petitioner has considered the standards in the three subsections in reverse order and prefaced them with the standard approved by this Court for the guidance of the Housing Expediter in *Woods* v. *Miller Co.*, 333 U. S. 138. It will be noted that the standard approved in the *Miller* case and the standards contained in Section 204 (j) are thus arranged in the order of diminishing degrees of validity, and the argument made at each stage that each standard is substantially equivalent to but a simplified form of the one preceding it.

A glance at these standards in tabular form, arranged in the order used in petitioner's brief will illustrate:

> Sec. 204(c) of 1947 Act (approved in *Woods* v. *Miller Co., supra*):
> "if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."
>
> Sec. 204(j)(3):
> "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village."
>
> Sec. 204(j)(2):
> if a state "by law declares that Federal rent control is no longer necessary in such State or any part thereof."

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Sec. 204(j)(1), first alternative:

"that the legislature of such State has adequately provided for the establishment and maintenance of maximum rents."

Sec. 204(j)(1), second alternative:

"or has specifically expressed its intent that State rent control shall be in lieu of Federal rent control."

Before considering the various "standards" individually, several general observations are pertinent. The congressional draftsmen had before them the language of Section 204(c) and if they had intended to prescribe the same standard to control state and local option, it is reasonable to assume that the same language would have been used. The fact that substantially different language was used would seem to indicate that Congress entertained a different intention with respect to the standard subscribed.

It must be observed also that with respect to the delegation of legislative power to the Housing Expediter, Congress is dealing with a person who is presumed to have substantial experience in connection with housing and the supply and lack thereof, and to have directed him to enter an order of decontrol based upon a finding with respect to the comparative supply and demand of such commodity in the market. In dealing, however, with the state legislature, the governer, and the various local authorities, there is no basis for assuming such technical proficiency. It is reasonable to suppose that Congress intended these bodies to act as they normally do in the discharge of their respective legislative and executive functions, i. e., as policy making bodies, and not as experts peculiarly qualified to determine market conditions with respect to availability of rental units.

Of the four sets of standards prescribed in Section 204(j), in only one is there any language which even sug-

gests that anyone is to "find" anything. This is in 204(j)(3), in which the municipal governing body is required to find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village" and is to be "reached as the result of a public hearing held after 10 days' notice." It seems clear that the "finding" here is not intended to be of the expert character of the finding required of the Housing Expediter, but rather of a finding reached as a result of a hearing resembling the old town meeting. Obviously, Congress contemplated a hearing for the purpose of permitting the expression of political views and the release of political opinion and pressure rather than a finding of an expert body which has informed itself by conducting hearings. It may be significant also that in providing for this public hearing and the subsequent finding of the municipal governing body, the Congress did not adopt the language which it has employed in Section 204(e)(A) to control findings of local advisory boards after public hearings. It will be noted that the language of Section 204(e)(A) prescribes exactly the same standard prescribed to govern a similar determination on the part of the Housing Expediter in Section 204(c) of the 1947 Act.[1]

The state legislatures, governors, and municipal governing bodies are not intended to make any specific findings of fact, but merely to determine as a matter of policy, or

---

[1] The language of Section 204(e)(A) reads as follows:

"(A) Removal of any or all maximum rents in the area, or any portion thereof, over which the local board has jurisdiction or with respect to any class of housing accommodations within such area or any portion thereof, if in the judgment of the local board the need for continuing maximum rents in such area or portion thereof or with respect to such class of housing accommodations no longer exists, due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met."

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politics, that they do not desire rent control to continue in their particular states or municipalities. Certainly no other conclusion can be reached by one who views realistically the events in Congress immediately prior to the passage of the Rent Act of 1949. The administration had a terrific battle to get through an extension of rent control legislation at all, a battle which many times hung in the balance. It was clearly unable to pass such a law unless it could get the support of certain Congressmen and Senators who felt that further extension of rent control was undesirable, and that it would not be acceptable to their constituents, but who were willing to yield to administration pressure, provided their own states or municipalities could be definitely assured of relief from such controls, or as the learned District Judge has put it, "declare themselves out". It is submitted that this is clearly the intention of Congress; that this is precisely the meaning of the language employed in Section 204(j) and in its various subsections, and that any attempt to distill from such language standards adequate to accompany a delegation of power and to convert the same into a mere fact-finding power is sheer sophistry.

Pertinent also to consideration of the present question are the implications of the fact that Congress has here delegated the power of decontrol in the alternative to the Housing Expediter or the state legislatures or municipalities with the approval of the Governor. The language of Section 204(c) permitting the Housing Expediter to decontrol is not merely permissive but directory. That subsection begins as follows:

> "(c) The housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense rental area, * * *"

Congress contemplates a situation where, although the Housing Expediter finds that under the standards prescribed for him, such defense rental area, or portion thereof, shall not be decontrolled, yet a state or a municipality will, notwithstanding that fact, effect such decontrol. Obviously if Congress intended the same standards prescribed for the Housing Expediter to control the actions of the states or municipalities, it might anticipate that the same result would be reached, and such dual delegation of fact-finding function would be superfluous, conflicting, and under the circumstances, illogical. The only inference which can be drawn from this situation is that Congress intended the states and municipalities to have the power to decontrol under circumstances where such power was not intended to be given to the Housing Expediter. The Government's assumption of substantial identity of standards prescribed for the Housing Expediter and for the states and municipalities is inconsistent with such inference.

It is submitted that in the light of the foregoing considerations, the argument of the Government that these various "standards" are substantially identical with those approved in *Woods* v. *Miller Co., supra,* is without merit. However, brief attention will be given to the argument of the Government upon the individual provisions, taken in the order in which the Government discusses them.

Section 204(j)(3) provides that the Housing Expediter shall terminate controls when local authorities, after public hearings and with the approval of the Governor, find that "there no longer exists such a shortage in rental housing accommodations as to require rent control in such city, town or village." The Government contends (B. 14-15) that this language is not distinguishable in substance from the standard approved in *Woods* v. *Miller Co., supra.* The standard approved there, from Section 204(c), specifies the basis for

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the Housing Expediter's determination, i. e., that the need for such controls no longer exists "due to sufficient construction of new housing accommodations or when the demand for rental accommodations has been otherwise reasonably met." Such specific standard is lacking in Section 204(j)(3). It is submitted that this difference is not merely one of verbiage, but of substance. Attention is invited to the fact that many intelligent, well-advised, public-minded people today feel that under existing conditions there no longer exists such a shortage in rental housing accommodations as to require rent-control anywhere; that during the actual war itself such a shortage did exist; and that the continuation of rent controls is the cause of such shortage rather than the cure therefor. This is not the policy written by Congress into the Rent Act of 1949, yet local authorities entertaining that point of view might and would in perfect accord with the "standard" set forth in 204(j)(3) effect decontrol of their particular area. Obviously, this is quite a different standard from that prescribed for the Housing Expediter himself, and is not a standard designed to carry out the legislative policy of the Act, but rather to defeat such policy by terminating such Act.

The same consideration is true, but even to a greater extent, with reference to the language of Section 204(j)(2) permitting a state legislature to decontrol the state by simply declaring that "federal rent control is no longer necessary in such state or any part thereof." The language "necessary" constitutes no standard at all, but is merely the equivalent of "desirable" or "in the public interest". It may be noted that this is the standard which always guides all state legislatures in the performance of their normal legislative functions, whether in the exercise of the police power or otherwise. The Government (B. 15-16) cites a number of cases approving as sufficiently specific

certain phrases including the word "necessary". Typical of these phrases are "public interest, convenience, or necessity" and "public convenience and necessity". Concededly these phrases are phrases of very definite and positive meaning in connection with franchise and licensing matters, defined through generations and centuries of usage, practice, and judicial interpretation. Obviously these cases are irrelevant and cannot impart to the word "necessary", standing alone, any definitive meaning of the type here contended for.

In Section 204(j)(1) there are two separate alternatives. The "standard" for the first is that the Governor shall advise the Housing Expediter "that the legislature of such state has *adequately* provided for the establishment and maintenance of maximum rents." The Government contends (B. 16-17) that the word "adequately" has the same meaning as the word "necessity" as used in Section 204(j)(2). What has been said with reference to Section 204(j)(2) is equally applicable to the word "adequately".

The second alternative in Section 204(j)(1) is that the Governor shall advise the Housing Expediter that the legislature "has specifically expressed its intent that state rent control shall be in lieu of federal rent control." The government cannot here find even a singe word out of which to attempt to spin a standard, but is forced (B. 17-18) to attempt to find some kind of a standard in the requirement that the Government shall also advise the Expediter "of the date on which such state rent control will become effective." The Government seizes upon the language "State rent control" and contends that since it must have been contemplated that such state rent control should provide some protection to the public against unduly high rents, the language "state rent control" in and of itself constitutes a standard. Such an argument is clearly without

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merit, and can be justified only upon the ground that no better argument is available.

It is apparent that only by the most strained and tortured interpretation can a standard be distilled from any of the provisions of 204(j), and that with reference to 204(j)(1) and 204(j)(2), no standard can be distilled even by such methods.

The case of *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, involved the question of the validity of the "hot oil" provision (9(c)) of the National Industrial Recovery Act of 1933. This Act authorized the President to prohibit the transportation in interstate and foreign commerce of petroleum produced or withdrawn from storage in excess of the amount permitted by state law. The "standards" in the Recovery Act were much more numerous, detailed and explicit than the "standards" of Section 204 (j) of the Housing and Rent Act, and the "declaration of policy" of the Recovery Act was more detailed than the instant Act. Nevertheless this Court invalidated the delegation. The Court said on page 421:

> The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Art. 1 § 1. And the Congress is empowered "To make all laws which shall be necessary and proper for carrying into execution" its general powers. Art. 1, § 8 Par. 18. The Congress manifestly is not permitted to abdicate, or to transfer to others, the essential legislative functions with which it is thus vested. Undoubtedly legislation must often be adapted to complex conditions involving a host of details with which the national legislature cannot deal directly. The Constitution has never been regarded as denying to the Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentali-

> ties the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the legislature is to apply. Without capacity to give authorizations of that sort we should have the anomaly of a legislative power which in many circumstances calling for its exertion would be but a futility. But the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained.

See also *Schechter* v. *United States*, 295 U. S. 494.

The delegation attempted in Section 204 (j) gives rise to a multitude of other problems regarding constitutional limitations upon state action and the character and nature of municipal corporations. We shall attempt to do little more than suggest these problems.

Section 204(j)(3), providing as it does for suspension of federal legislation by act of the municipal legislative body with approval of the governor, clearly, it seems to us, attempts to confer upon the municipality a power and to require from it an action which it can neither receive nor exercise. It is axiomatic in the law that a municipal corporation is merely a creature of the state legislature endowed by it with powers, existing at its sufferance, subject to its complete control and domination, and having and enjoying no powers whatever except those conferred upon it by the legislature.[2] It is difficult to reconcile with this basic doctrine the idea that Congress can confer additional powers upon municipal corporations.

It is conceivable that this difficulty might be cured by a

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[2] *Laramie County* v. *Albany County*, 92 U. S. 307; *Mt. Pleasant* v. *Berhalter*, 100 U. S. 514; *Mobile* v. *Watson*, 116 U. S. 289; *People's Pass R. Co.* v. *Memphis City*, 10 Wall. 38; *Joslin Mfg. Co.* v. *Providence*, 262 U. S. 668; *St. Joseph Twp.* v. *Rogers*, 16 Wall. 644; *Stewart* v. *Kansas City*, 239 U. S. 14; *Atkins* v. *Kansas*, 191 U. S. 207.

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sufficiently specific enabling act of the legislature, provided such act could be drawn without contravening other state constitutional limitations. Pennsylvania has made such an attempt in a statute which has not as yet been judicially reviewed. Act No. 372, May 11, 49, 35 P. S. 1691-1693. It seems clear, however, that the further difficulty with regard to the approval required of the governor, cannot be met by such a legislative act, although Pennsylvania has attempted that too in the statute cited. The function of approving such a municipal act obviously implies the power to disapprove and is therefore in effect a veto. The basic difficulty is that the powers of the governor of a state are customarily prescribed by the state constitution and cannot be modified by act of the state legislature, and certainly not by act of Congress, although this latter feat is attempted in Section 204(j)(3).

Even if such a state enabling act were not otherwise objectionable, it seems probable that it might be invalid as violating prohibitions against special legislation, denying equal protection of the laws, or conflicting with other constitutional limitations commonly found in state constitutions. We shall make no attempt to evaluate the constitutional difficulties implicit in the provision of Section 204(j)(3) requiring the Housing Expediter to decontrol the balance of the area after the municipality has "declared itself out" of rental control, beyond pointing out that the ultimate effect of this provision would be to permit the municipality to legislate for unincorporated territory surrounding it.

Attention is invited to the evaluation of Section 204 (j) by the Senate majority leader, Senator Lucas, in 95 Cong. Rec. (Adv. Ed.) 2985 which states:

> To say, Mr. President, that the Senate should give the governor veto power over every municipality in the

State is something I could not vote for under any circumstances. That such a provision is unconstitutional there can be no doubt.

B. Government's Contention That "the Reliance Upon State and Local Action Does Not Violate the Constitution" is Inapplicable.

In its brief the Government divides this point into two sub-headings. The first apparently stresses the idea of delegation, and the second the concept of withdrawal or relinquishment, as instrumentalities of federal and state cooperation. We feel it best in the interest of brevity and clarity to treat both aspects together.

Concededly the general proposition that the reliance upon state and local action does not violate the constitution is true when limited to proper situations such as those suggested in the Government's brief (B. 18-26). However it is submitted that the cases cited are not analogous to the instant situation. In none of those cases is there involved an attempt upon the part of Congress to delegate to a state, a municipality, or a state governer actual legislative power, as is attempted under Section 204 (j).

The cases of *United States* v. *Jones*, 109 U. S. 513, involving delegation to a state tribunal, the determination of compensation to be paid by the United States in eminent domain matters; the case of *Butte City Water Co.* v. *Baker*, 196 U. S. 119, involving use of state agencies in the disposition of mining claims on public lands; and similar cases, involve not the delegation or even exercise by the Congress of *legislative* power as such, but the exercise of the function of management of federal business and affairs in a proprietary capacity. In the portion of the *Butte City Water Co.* case quoted by the Government on Page 21 of its brief, this Court characterized the power as "not of a

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legislative character in the highest sense of the term," but as the function of an owner who "might delegate to his principal agent the right to employ subordinates, giving to them a limited discretion."

The cases referred to by the Government (B. 19) in connection with the Conformity Act, first enacted in 1789 (1 Stat. 93 R. S. § 914) involved the adoption of mere procedural matters of detail in connection with the operation of the federal courts. This did not involve the actual delegation of legislative power to the states, but an attempt early in the history of our federal system to utilize rules of procedure familiar to local judges and practitioners at a time when a comprehensive body of strictly federal procedure had not been devised and when virtually all the business of the federal courts involved matters arising under local law. Today, of course, the federal courts are controlled by the Federal Procedure Act and implementing rules, and the business of these courts is no longer so predominantly local.

It is difficult to perceive in *Hanover National Bank* v. *Moyses*, 186 U. S. 181, recognizing state exemptions in bankruptcies, any delegation of federal legislative power. Actually the federal bankruptcy court is merely liquidating the estate of the bankrupt as it finds it. The character and quantum of that estate and its availability to creditors is naturally a matter primarily governed by the state law, and it seems very doubtful if Congress would have the power under its bankruptcy laws to brush aside such state exemptions, although it probably could condition the right to have recourse to the bankruptcy law upon the voluntary waiver thereof.

Cases such as *In re Rahrer, petitioner*, 140 U. S. 545, *Clark Distilling Co.* v. *Western Md. Ry. Co.*, 242 U. S. 311,

Kentucky Whip & Collar Co. v. *Ill. Central R. Co.*, 299 U. S. 334, *Griswold* v. *President*, 82 Fed 2nd 922 (C. C. A. 5) and *Rupert* v. *United States*, 181 Fed. 87 (C. C. A. 8) involved the exercise of the power of Congress to regulate interstate commerce for the purpose of implementing the policies of various state laws having to do with liquor, distribution of prison-manufactured goods, "hot oil", illegally killed game, etc. These cases do not by any stretch of the imagination involve a delegation, relinquishment or abdication of federal power to the states, but a true accommodation of state and federal powers, each retained by the respective sovereign.

The cases cited by the Government on Page 23 and the first half of Page 24 of their brief all involve, as do some of the other cases cited under this general broad heading, the delegation of a function, not legislative but either administrative, judicial or quasi-judicial. For example, *Parker* v. *Richard*, 250 U. S. 235, involves the conferring upon a state Probate Court of the guardianship of Indians. The statute involved in *Dallemagne* v. *Moisan*, 197 U. S. 169, involves the function of arresting, obviously an administrative one, as in the case of arresting deserted seamen in *Robertson* v. *Baldwin*, 165 U. S. 275. The same is true of local enforcement of the National Prohibition Act as indicated in *Gambino* v. *United States*, 275 U. S. 310. None of these cases involved the delegation to a state or municipal legislative body of the function of performing a legislative act.

The cases of *Currin* v. *Wallace*, 306 U. S. 1; *United States* v. *Rock Royal Co-op*, 307 U. S. 533 and *Wickard* v. *Filburn*, 317 U. S. 111, all conditioning the effectiveness of a federal administrative order upon approval of a two-thirds vote of the farmers or producers participating in the particular market, are clearly not analogous to the delegation involved

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in Section 204 (j). Such provisions might be analogous to Section 209 of the 1948 Rent Act, conditioning the right of owners of cooperative apartments to evict tenants upon 65% owner participation in the cooperative venture. Obviously these cases do not involve in any sense a problem of relationship between federal and state government, or delegation or exchange of authority or functions between federal and state governments, but merely a marketing arrangement, affecting the federal government and certain citizens and residents of the United States who, also, coincidentally, are citizens and residents of particular states. While a question involving the 9th and 10th amendments, or the permissible limits of Congressional control of interstate commerce might be involved, no problem of delegation analogous to the instant situation is so involved.

The Government contends (B. 26) that in a federated system such as ours cooperative adjustments between the states and the federal government are to be favored. *Prudential Insurance Co.* v. *Benjamin*, 328 U. S. 408, is cited as authority for the proposition. That case involved a withdrawal from the field of regulating interstate commerce insofar as the insurance business was concerned, and was not inconsistent with the long line of cases relating to federal and state action in the field of interstate commerce. The decision was expressly limited to the field of interstate commerce and is not in point. In that case Congress withdrew from the field entirely and on a uniform national scale. In Section 204 (j) Congress does not contemplate withdrawal from the field, but permits state and municipal governments to alter and nullify federal control and to substitute laws inconsistent with the general purpose of the Act.

While cooperation between State and Federal governments is to be favored, it is doubtful whether Section 204 (j)

of the Act will tend to promote such cooperation. If anything, the reverse should be true. As was pointed out earlier in this brief, the Housing Expediter is directed to decontrol defense-rental areas where in his judgment the housing shortage has been reasonably met. The local option provision of 204 (j) must of necessity become operative only while in the judgment of the Housing Expediter, at least, there is still need for federal control. The state of Texas has "cooperated" by enacting a law which reads in part as follows (Chapter 472, 23 Vernon's Ann. Civ. St. Art. 1269 1.1):

> Section 1. Rent control as established by the Act of the Eighty-first Congress of the United States extending rent control for a period of fifteen (15) months from and after March 31, 1949, as further described in Housing and Rent Act of 1949, H. R. 1731, is hereby abolished in the State of Texas and is declared to be no longer needed in the State of Texas, and all Federal rent controls are hereby declared no longer needed in the State of Texas.

Any action taken by states or municipalities, whether by virtue of Section 204(j) (1), (2), or (3) is in direct conflict with the authority of the Federal Government, in the exercise of its war powers. The two governments do not act jointly, but action by the state or municipality removes the government from the field.

The War Powers are similar in nature to the powers over external affairs. In the latter field the Federal Government is supreme. In *Hines* v. *Davidowitz*, 312 U. S. 52, 68, the Court stated that the field which affects international relations is "the one aspect of our government that from the first has been most generally conceded imperatively to demand broad national authority," and that any state power which may exist "is restricted to the narrowest limits." There the Court was dealing with the question of whether

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a state statute regulating aliens survived a similar federal statute and held that it did not.

It was early decided that when the federal government has acted under the war power, the states may not constitutionally take any action in that field. *Tarble's* case, 80 U. S. (13 Wall.) 397 (1871). In that case it was held that the Supreme Court of Wisconsin could not issue a writ of habeas corpus discharging from the criminal custody of the United States a soldier who had sworn falsely as to his age upon enlistment. See 56 Am. Jur. 146. But may the Federal Congress, if it chooses, delegate a part of its war power to a state? It is necessary first to examine the nature of the war powers.

The nature of the war powers is carefully discussed in *United States* v. *Curtiss-Wright Export Corporation*, 299 U. S. 304, 315:

> The two classes of powers are different, both in respect of their origin and their nature. The broad statement that the Federal government can exercise no powers except those specifically enumerated in the Constitution, and such implied powers as are necessary and proper to carry into effect the enumerated powers, is categorically true only in respect of our internal affairs. In that field, the primary purpose of the Constitution was to carve from the general mass of legislative powers then possessed by the states such portions as it was thought desirable to vest in the Federal government, leaving those not included in the enumeration still in the states. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 294, 80 L. ed. 1160, 1180, 56 S. Ct. 855. That this doctrine applies only to powers which the states had, is selfevident. And since the states severally never possessed international powers, such powers could not have been carved from the mass of state powers but obviously were transmitted to the United States from some other source. During the colonial period, those powers were possessed exclusively by and were entirely under the control of the Crown. By the Declara-

tion of Independence, "the Representatives of the United States of America" declared the United (not the several) Colonies to be free and independent states, and as such to have "full Power to levy War, conclude Peace, contract Alliances, establish Commerce and to do all other Acts and Things which Independent States may of right do."

As a result of the separation from Great Britain by the colonies, acting as a unit, the powers of external sovereignty passed from the Crown not to the colonies severally, but to the colonies in their collective and corporate capacity as the United States of America. Even before the Declaration, the colonies were a unit in foreign affairs, acting through a common agency—namely the Continental Congress, composed of delegates from the thirteen colonies. That agency exercised the powers of war and peace, raised an army, created a navy, and finally adopted the Declaration of Independence. Rulers come and go; governments end and forms of government change; but sovereignty survives. A political society cannot endure without a supreme will somewhere. Sovereignty is never held in suspense. When, therefore, the external sovereignty of Great Britain in respect of the colonies ceased, it immediately passed to the Union. See *Penhallow* v. *Doane,* 3 Dall. 54, 80, 81, 1 L. ed. 507, 518, 519. That fact was given practical application almost at once. The treaty of peace, made on September 3, 1783, was concluded between his Britannic Majesty and the "United States of America". 8 Stat. at L.—European Treaties—80.

The Union existed before the Constitution, which was ordained and established among other things to form "a more perfect Union". Prior to that event, it is clear that the Union, declared by the Articles of Confederation to be "perpetual", was the sole possessor of external sovereignty, and in the Union it remained without change save in so far as the Constitution in express terms qualified its exercise. The Framers' Convention was called and exerted its powers upon the irrefutable postulate that though the states were several their people in respect of foreign affairs were one. Compare Chinese Exclusion Case,

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130 U. S. 581, 604, 606, 32 L. ed. 1068, 1075, 1076, 9 S. Ct. 623. In that convention, the entire absence of state power to deal with those affairs was thus forcefully stated by Rufus King:

> "The states were not 'sovereigns' in the sense contended for by some. They did not possess the peculiar features of sovereignty,—they could not make war, nor peace, nor alliances, nor treaties. Considering them as political begins, they were dumb, for they could not speak to any foreign sovereign whatever. They were deaf, for they could not hear any propositions from such sovereign. They had not even the organs or faculties of defence or offence, for they could not of themselves raise troops, or equip vessels, for war." Elliot, Debates 212.

In the case of *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, the question involved was the jurisdiction of the District Court under the Judiciary Act of 1789 (Chap. 20, 1 Stat. at L. 76) which granted to that court exclusive and original cognizance of all civil causes of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy, where common law is competent to give it. The Act of October 6, 1917, added to the abovementioned saving clause the following words: "And to claimants the rights and remedies under workmen's compensation laws of any State." Prior to the amendment the District courts had jurisdiction of specified claims and common law actions. The amendment sought to add causes of action under workmen's compensation laws of the various states. The amendment was held unconstitutional. The Court said on page 164:

> And, so construed, we think the enactment is beyond the power of Congress. Its power to legislate concerning rights and liabilities within the maritime jurisdiction, and remedies for their enforcement, arises from the Constitution, as above indicated. The definite object of the grant was to commit direct control to the Federal government; to relieve maritime commerce

from unnecessary burdens and disadvantages incident to discordant legislation; and to establish, so far as practicable, harmonious and uniform rules applicable throughout every part of the Union.

Considering the fundamental purpose in view and the definite end for which such rules were accepted, we must conclude that in their characteristic features and essential international and interstate relations, the latter may not be repealed, amended, or changed except by legislation which embodies both the will and deliberate judgment of Congress. The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. Moreover, such an authorization would inevitably destroy the harmony and uniformity which the Constitution not only contemplated, but actually established,—it would defeat the very purpose of the grant. See *Sudden & Christenson* v. *Industrial Acci. Commission*, ... Cal. ..., 188 Pac. 803.

Congress cannot transfer its legislative power to the states,—by nature this is nondelegable. *Re Rahrer*, 140 U. S. 545, 560, 35 L. ed. 572, 576, 11 Sup. Ct. Rep. 865; *Marshall Field & Co.* v. *Clark*, 143 U.S. 649, 692, 36 L. ed. 294, 309, 12 Sup. Ct. Rep. 495; *Buttfield* v. *Stranahan*, 192 U.S. 470, 496, 48 L. ed. 525, 535, 24 Sup. Ct. Rep. 549; *Butte City Water Co.* v. *Baker*, 196 U.S. 119, 126, 49 L. ed. 409, 412, 25 Sup. Ct. Rep. 211; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U.S. 194, 214, 56 L. ed. 729, 737, 32 Sup. Ct. Rep. 436.

After the above decision holding the amendment to the Judicial Code unconstitutional, Congress by the Act of June 10, 1922, attempted to remedy the defect by excluding persons other than the masters and members of the crew from the jurisdiction of the Court. The Court in *Washington* v. *Dawson & Co.*, 264 U.S. 219, nevertheless held the provisions invalid. The court repeated with approval the

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above-quoted language from the *Knickerbocker* case, *supra*, and added:

> Without doubt Congress has power to alter, amend, or revise the maritime law by statutes of general application embodying its will and judgment. This power, we think, would permit enactment of a general employers' liability law, or general provisions for compensating injured employees; but it may not be delegated to the several states * * *.
>
> This cause presents a situation where there was no attempt to prescribe general rules. On the contrary, the manifest purpose was to permit any state to alter the maritime law, and thereby introduce conflicting requirements. * * * Of course some within the states may prefer local rules; but the union was formed with the very definite design of freeing maritime commerce from intolerable restrictions incident to such control. The subject is national. Local interests must yield to the common welfare. The Constitution is supreme.

It is submitted that the exercise of war powers by the Congress of the United States, like the exercise of admiralty jurisdiction, is primarily a national matter. In an emergency all interest must serve the National welfare. Local option and local referenda are inconsistent with the exercise of national emergency powers. In the command of armies in the field there can be only one supreme commander. Divided command and divided responsibility invites disaster. So too, in the alleged war on inflation, if there should be any federal control, such control should be uniform through the land.

II.

SECTION 204 (J) IS INSEPARABLE FROM THE REMAINDER OF THE HOUSING AND RENT ACT.

In arguing that Section 204 (j) is separable from the remainder of the act, the government sets forth the following (B. 29):

> The well *establish rule* is that the invalidity of part of a law will not affect the remainder (1) if the valid provisions are capable of being given legal effect standing alone; and (2) if the legislature would have intended them to stand with the invalid provisions stricken out.

It will be noted that the government characterizes the foregoing as "the well established rule". This rule is well established and we shall consider the instant situation in the light of that rule before concluding this portion of the argument. However, the government has failed to state another very important rule which is deemed controlling in this type of situation. This rule is set forth in American Jurisprudence, vol. 11, § 161, page 855 as follows:

> One important class of cases in which questions as to the severability of valid and invalid portions of an act and the determination of the legislative intent are involved consists of statutes containing invalid exceptions and provisos. The general rule is that if such a proviso operates to limit the scope of the act in such a manner *that by striking out the proviso, the remainder of the statute would have a broader scope either as to subject or territory,* then the whole act is invalid, because such extended operation would not be in accordance with the legislative intent. (Italics supplied)

The foregoing rule is exemplified and restated by this Court in *Davis* v. *Wallace,* 257 U. S. 478, 484. In that case, the statute invalidated was one imposing a special excise

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tax upon foreign corporations doing business in the state which contained a proviso that in case of railway corporations or other public utility corporations having lines partly within and partly out of the state, the tax should be computed and assessed by a formula prescribed in the statute, which proviso the Court had found to be invalid. The language of the Court is as follows:

> Where an excepting provision in a statute is found unconstitutional courts very generally hold that this does not work an enlargement of scope or operation of other provisions with which that provision was enacted and which it was intended to qualify or restrain. The reasoning on which the decisions proceed is illustrated in *State ex rel. McNeal* v. *Dombaugh*, 20 Ohio St. 167, 174. In dealing with a contention that a statute containing an unconstitutional proviso should be construed as if the remainder stood alone, the court there said: "This would be to mutilate the section, and garble its meaning. The legislative intention must not be confounded with their power to carry that intention into effect. To refuse to give force and vitality to a provision of law is one thing, and to refuse to read it is a very different thing. It is by a mere figure of speech that we say an unconstitutional provision of a statute is 'stricken out'. For all the purposes of construction it is to be regarded as part of the act. The meaning of the legislature must be gathered from all they have said, as well as from that which is ineffectual for want of power, as from that which is authorized by law."
>
> Here the excepting provision was in the statute when it was enacted, and there can be no doubt that the legislature intended that the meaning of the other provisions should be taken as restricted accordingly. Only with that restricted meaning did they receive the legislative sanction which was essential to make them part of the statute law of the State, and no other authority is competent to give them a larger application. Had they been enacted without the excepting provision and had it been embodied in a subsequent amendatory act a different situation would be presented—one in which

> that provision would have no bearing in the meaning or scope of the others—because an existing statute cannot be recalled or restricted by anything short of a constitutional enactment.

To like effect is the decision in *Spraigue* v. *Thompson*, 118 U. S. 90, 94 in which the Court said:

> It was held, however, by the Supreme Court of Georgia in the case now before us, that so much of the section as makes these illegal exceptions may be disregarded, so that the rest of the section as there read may stand, upon the principle that a separable part of a statute which is unconstitutional may be rejected, and the remainder preserved and enforced. But the inseparable difficulty with the application of that principle of construction to the present instance is that by rejecting the exceptions intended by the Legislature of Georgia, the statute is made to enact what confessedly the Legislature never meant. It confers upon the statute a positive operation, beyond the legislative intent and beyond what anyone can say it would have enacted in view of the illegality of the exceptions. We are, therefore, constrained to hold that the provisions of section 1512 of the Code of Georgia cannot be separated so as to reject the unconstitutional exceptions merely, and that the whole section must be treated as annulled and abrogated by section 4237 of the Revised Statutes.

It is true that in the foregoing cases there was no separability clause. However, it is submitted that the language of the Court makes it clear that the well settled rule with respect to the effect of invalidity of statutes containing an invalid proviso transcends the realm of presumption, which is the only realm within which the separability clause operates. *Dorchy* v. *Kansas*, 264 U.S. 286; *Electric Bond and Shares Co.* v. *Securities and Exchange Commission*, 303 U.S. 419; *Carter* v. *Carter Coal Company*, 298 U.S. 238. The rule is further exemplified where a separability clause is present in *State* v. *Inland Empire Refineries*, 3 Wash.

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(2d) 651, 101 P. (2d) 975, Cert. Den. 311 U.S. 713, in which the Court invalidated an entire act notwithstanding the existence of a conventional separability clause. The gist of the decision is set forth in the following from the opinion:

> When Chapter 186, Laws of 1939 was passed by the legislature and signed by the governor a tax was imposed upon every distributor of petroleum products except those exempted by section 15. It would be contrary to the expressed intent of the legislature for us to sustain the act after striking down section 15 subsection (d), (e) and (f) and impose upon the persons included within those exemption clauses, the distributors whom the legislature said were not to be taxed. Section 21, Chapter 186, Laws of 1939, reads as follows: "If any section, subsection, clause, sentence or phrase of this act, including those setting forth any penalty, exemption or definition, is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this act, and the Legislature hereby declares it would have enacted this act if such section, subsection, clause, sentence or phrase were omitted.

Numerous other decisions of state and inferior Federal courts to the same effect are cited to the rule quoted above from American Jurisprudence.

Applying the rule enunciated by the government (B. 29) it is felt that precisely the same result must be reached, and Section 204 (j) be held inseparable. While it is conceded that the "valid provisions are capable of being given legislative effect standing alone" it is submitted that the statute in question would have quite a different effect without the local option provisions. Six sovereign states have at this time "declared themselves out" of Federal rent control. With Section 204 (j) in the law, these six states are not controlled. With Section 204 (j) held invalid, these states would be recontrolled. It is difficult to see that this law "stands" as the same law.

The obvious intent of this rule is that where a statute is realistically and in truth separable in the sense that one portion of it can operate in substantially the same manner with the other portion declared invalid, then such invalid portion is separable. Such a case is *Electric Bond and Share Company* v. *Securities and Exchange Commission*, 303 U. S. 419, in which the direct regulation provisions of the Public Utility Holding Company Act of August 25, 1935 were deemed valid despite the invalidation of certain S.E.C. registration provisions therein. The invalidation of the registration provisions did not in any sense expand or increase the applicability or effect of the regulatory provisions of the statute. They merely constituted an additional regulatory function sought to be imposed by Congress. The same may be said of all of the other cases cited by the government in which the separability clause has been given effect. In *Highland Farms Dairy* v. *Agnew*, 300 U.S. 608, for example, a case dealing with a milk marketing act, this court, solely by way of dictum, expressed the opinion that the act itself would not be invalidated by the failure of a minor provision thereof dealing with the cancellation of certain prices in particular markets. The Court characterized the provision as "so subordinate" (300 U. S. 614).

The second requirement of the rule set forth in the government brief (B. 29) is that the legislature would have intended the remainder of the act to stand with the invalid provisions stricken out. This brings us squarely to the question of what the intention of Congress was when it adopted the Rent Act of 1949. No one who has even followed the newspaper reports of the terrific Congressional battle required to reenact a rent control law in the spring of 1949 can be so naive as to believe that the administration and the principal proponents of rent control desired the

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provisions of Section 204 (j) to be a part of the act. It is common knowledge, which is adequately documented throughout the Congressional Record for the period, that Section 204 (j) was written into the act as the result of a "deal" with Senators and Congressmen representing areas which were either clearly opposed or divided on the question of any continuation of rent control and who would not have concurred in the passage of any rent control law had they not been able to assure their constituents of their right to secure relief therefrom at any time they desired.

The Government (B. 34-36) discusses at some length the computation of votes in Congress for and against the act itself and for and against Section 204 (j). It also engages in an almost metaphysical consideration of what constitutes a Congressional majority in a situation of this kind. The government concludes apparently that these considerations should not be decisive or controlling. With this we are in accord and feel that it is wholly unnecessary to apply any such test.

We believe that a realistic view of the substance rather than the form of the effect and meaning of the Rent Act of 1949 with the local option provision of Section 204 (j) stricken therefrom will resolve all doubts. Actually, this act, as passed by Congress and approved by the President, was in and of itself nothing more nor less than a local option statute permitting state legislatures and municipal councils to adopt rent control if they so desired. It is true that the statute is cast in a negative form. Under a local option statute, in conventional form, a particular area does not come under the effective operation of the act until it takes affirmative action. In the instant case, the areas controlled under the preceding act are controlled unless they take affirmative action. It is very difficult to see that there is any difference in substance between this act as adopted

and the same act cast in affirmative form, i. e., the conventional local option act. If this act had been cast in such affirmative and conventional form, it is very difficult to believe that the government could even seriously contend for the preservation of the "remainder" of the act after the local option provisions thereof had been stricken. The effect would be grotesque. In lieu of a local option statute giving localities the right to adopt the act, the effect of the court's ruling would be to impose mandatorily the operation of such an act upon such areas. We do not believe that this Court will malign Congress by attributing to them any such intent.

The following portion from *Lewis Sutherland, Statutory Constuction,* 1904, Volume 1, page 601, is pertinent:

> A provision which states a contingency on which the act is or is not to take effect, whether it be the result of a popular vote or some other, is not independent and separable; for the intent of the law maker is therein expressly declared, and the statute cannot on principle take effect contrary to that intent, though it be expressed, in a section wholly unconstitutional.

One further consideration should be noticed. At page 29 of its Brief, the government goes to some trouble to indicate the fact that the Rent Act, prior to its enactment in 1949, constituted a complete body of law which can stand alone with Section 204 (j) stricken. It is, of course true that where an existing statute is subsequently amended and the amendment is declared invalid, the Court will normally hold such amendment to be separate. An instance of such a holding is set forth in *Frost* v. *Corporation Commission,* 278 U.S. 515, a case in which the language quoted above from *Davis* v. *Wallace, supra,* is confirmed and approved. It will be noted that parts of the quoted portions therefrom deal with this particular rule.

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Appellants desire to emphasize the fact that the instant situation does not fall within that rule. Section 204 (j) does not constitute an amendment to an existing act. The Rent Act of 1948 expired on March 31, 1949 by its own terms. Moreover, the Act of 1949 differs in material respects from the 1948 Act. In the 1949 Act, for the first time "fair net operating income" became a basic rule in determining maximum rentals which were permissible. The entire section dealing with the right to evict tenants was discarded and for the first time in a Rent Law (as distinguished from the earlier general price control law), the Housing Expediter was permitted to regulate or prohibit speculative and manipulative practices without any specifications as to grounds upon which evictions were to be obtainable. The prior act "permanently" decontrolled various types of housing accommodations. The 1949 Act imposed controls upon certain types of housing accommodations which had previously been permanently decontrolled. The United States was authorized to institute suits for treble damages. Both legally and practically the 1949 Act is a new act; the local option provisions of Section 204 (j) are an integral and inseparable part thereof; and it is submitted that such act must stand or fall as a unit.

III.

OTHER CONSTITUTIONAL OBJECTIONS.

In its brief (B. 38, *et seq.*) the appellant has grouped all other objections to the validity of the Rent Act of 1949 under one general heading. Although we desire to have it distinctly understood that by acquiescing in this grouping we do not feel that these objections are less important than those previously discussed, we shall nevertheless, in the

interest of clarity, follow the system of classification and numbering which has been set by the appellant in its brief.

1. At the time of the enactment of the Rent Act of 1949 the so-called "war emergency" had terminated.

With respect to this point, appellant suggests (B. 38) that appellees mean to imply that the exercise of war powers is limited to a period when actual fighting is in progress. This is not our position. In *Woods* v. *Miller Co.*, 333 U. S. 138, as well as in earlier cases, the Court has held that the right of Congress to exercise war powers is not terminated by the end of the "shooting war". We are of course bound by this holding.

It is our position that under the doctrine of *Woods* v. *Miller Co., supra,* the war emergency is ended and that there is not now and has not been for several years any actual shortage of rental housing; and that therefore the entire basis of the power of the federal government to regulate rents has ceased to exist.

The basic authority of Congress to keep such a law in effect is conditioned upon the continuation of a war emergency, and when such emergency ends, the legislation must necessarily become inoperative and fall of its own weight.

The opinion of Mr. Justice Holmes in *Chastleton Corporation* v. *Sinclair,* 264 U. S. 543, enunciates this position forcefully. The situation in that case is analagous to the one which confronts the present court. The rent act adopted for the District of Columbia in 1919 and approved by this Court in *Block* v. *Hirsh,* 256 U. S. 135, had been twice extended. Plaintiffs sought to enjoin the enforcement of the act as against them; and their bill had been dismissed below. This Court reversed. Mr. Justice Holmes said (p. 547):

> We repeat what was stated in *Block* v. *Hirsh,* 256

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U. S. 135, 154, 65 L. ed. 865, 870, 16 A.L.R. 165, 41 Sup. Ct. Rep. 458, as to the respect due to a declaration of this kind by the legislature so far as it relates to present facts. *But, even as to them, a court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared.* 256 U. S. 154, *Chas. Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 536, 67 L. ed. 1103, 1108, 27 A. L. R. 1280, 43 Sup. Ct. Rep. 630. And still more obviously, so far as this declaration looks to the future, it can be no more than prophesy, and is liable to be controlled by events. *A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though valid when passed. Perrin* v. *United States*, 232 U. S. 478, 486, 487, 58 L. ed. 691, 695, 696, 34 Sup. Ct. Rep. 387; *Missouri* v. *Chicago, B. & Q. R. Co.*, 241 U. S. 533, 539, 540, 60 L. ed. 1148, 1154, 1155, 36 Sup. Ct. Rep. 715. In *Newton* v. *Consolidated Gas Co.*, 258 U. S. 165, 66 L. ed. 538, 42 Sup. Ct. Rep. 264, a statutory rate that had been sustained for earlier years in *Wilcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 53 L. ed. 382, 48 L. R. A. (N. S.) 1134, 29 Sup. Ct. Rep. 192, 15 Ann. Cas. 1034, was held confiscatory for 1918 and 1919.

The order, although retrospective, was passed some time after the latest statute, and long after the original act would have expired. In our opinion it is open to inquire whether the exigency still existed upon which the continued operation of the law depended. It is a matter of public knowledge that the government has considerably diminished its demand for employes that was one of the great causes of the sudden afflux of people to Washington, and that other causes have lost at least much of their power. It is conceivable that, as is shown in an affidavit attached to the bill, extensive activity in building has added to the ease of finding an abode. *If about all that remains of war conditions is the increased cost of living, that is not, in itself a justification of the act.* Without going beyond the limits of judicial knowledge, we can say at least that the plaintiffs' allegations cannot be declared offhand to be unmaintainable, and that it is not impossible that a full

development of the facts will show them to be true. In that case the operation of the statute would be at an end. [Italics supplied.]

It will be noted that in the original decision of *Block* v. *Hirsh*, 256 U. S. 135, 154, this Court contemplated that a time would come when the war emergency would expend itself and the rent legislation become inoperative. In *Chastleton Corporation* v. *Sinclair, supra*, the court, held that that time had come. In *Woods* v. *Miller, supra*, the court, while sustaining the Act of 1947, likewise recognized the same doctrine, and that such a time would come. It is the contention of the appellees in the instant suit that that time has come.

Appellees desire to preface their argument with respect to the termination of the war emergency and to the elimination of the housing shortage with two preliminary considerations. In the first place it is clear that while the courts are required to give great respect to legislative determinations, they are not bound by such determinations. *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Holding Co.* v. *Feldman*, 256 U. S. 170; *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543; *Woods* v. *Miller Co., supra; Home Building and Loan Assn.* v. *Blaisdell*, 290 U. S. 398.

The second preliminary consideration is the well settled rule that the Court may take judicial notice of general economic and political conditions, matters of foreign affairs, public acts of the legislature and executive, and other matters of general information. *Jones* v. *U. S.*, 137 U. S. 202, 224. Specifically, appellants intend to ask the Court to take judicial notice of certain such matters, including particularly executive orders, proceedings before the Congress, and statistics compiled by the United States Bureau of the Census.

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A. The transition from war to peace has been effected.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the complaint for injunction was filed July 11, 1947. The case was argued and decided by this Court in February of 1948. At that time the country was still in the transition from war to peace. Our occupation of Germany was still predominantly military and here at home some commodities, particularly durable goods, were still in short supply. Today, however, it is submitted that the transition from war to peace has been completed, and that, to the extent that a state of war exists, it is purely technical.

Appellees have set forth as "Appendix B" to this brief a list of treaties, statutes, executive orders, press releases, and miscellaneous data, covering the years 1947, 1948, and 1949, and indicating clearly, we believe, this transition from war to peace. These materials have been arranged under the general headings of military, international political, and international economic and social phases of transition. Many of the items listed are not of great individual significance, but serve to indicate a trend and to characterize the transition. The Court is respectfully requested to take judicial notice of the facts reflected in such data.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the Court recognizes the fact that war powers cannot be continued indefinitely by keeping alive a purely technical state of war. It is submitted that only such a state of war exists today. As early as September 15, 1947 the President proclaimed treaties of peace with Italy, Romania, Bulgaria and Hungary and proclaimed also the termination of war with those countries. St. Dept. Bull. XVII, p. 771 (Oct. 19, 1947).

Certainly failure to execute formal treaties with Germany, Japan and Austria can be of no substantial significance. The war with those countries ended with their

complete surrender. They were at the time of surrender and have continued to be completely and abjectly subject to the will of the conquerors. The execution of treaties with such countries does not for all practical purposes require negotiations with them, but simply dictation of the terms of such treaties. Such negotiations as may be required are necessarily negotiations with other allied powers with respect to terms of treaties, rather than with the conquered powers themselves. This situation must be contrasted with that which prevailed at the time of the conclusion of the first war. The peace there was actually a negotiated peace, following the cessation of hostilities by armistice with a nation which had not surrendered. Such negotiations as may be now carried on with conquered nations must be viewed realistically merely as gestures of magnanimity and overtures toward kindly relations.

Appellees desire to call attention to several miscellaneous treaties and occurrences, only because they characterize the present state of international relations as "business as usual." On August 3, 1949, the Atomic Energy Commission released to the press an account of three years' distribution of isotopes to individuals and institutions for medical, agricultural and industrial purposes. Out of a total of 7613 so distributed, 588 were among foreign nations. St. Dept. Bull. XXI, pp. 250-251 (August 22, 1949).

On November 9th, 1948, a press release announced the ratification by the United States and Norway (an occupied country) of a claim convention to settle two claims of individual citizens. St. Dept. Bull. XIX, pp. 646-647 (Nov. 21, 1948).

On January 3, 1949, the Voice of America opened Washington broadcasting studios to originate direct worldwide short wave broadcasts. St. Dept. Bull. XX, p. 83 (Jan. 16, 1949).

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On August 18, 1949 the Senate unanimously ratified fishing treaties with Mexico and Costa Rica, and a Northwest Atlantic Fisheries International Convention. St. Dept. Bull. XXI, p. 355 (Sept. 5, 1949).

On January 13, 1949, the following treaties were transmitted to the Senate by the President: (1) International convention for the safety of life at sea signed at London 6/10/48; (2) Convention of World Meteorological Organization opened for signature at Washington on 10/11/47 with a protocol; (3) Inter-American convention on the granting of political rights to women, signed at Bogota, Colombia, on 5/2/48; (4) Convention on the International recognition of rights in aircraft signed at Geneva 6/19/48; (5) Protocol dated in London 8/31/48 prolonging for one year after 8/31/48 the international agreement regarding the regulation of production and marketing of sugar, signed at London 5/6/37. St. Dept. Bull. XX, p. 118 (Jan. 23, 1949).

No review is attempted in Appendix B of the extensive and well-publicized work of the United Nations. Attention is invited however to the fact that its functions are those of preserving the peace rather than settling the problems of the last war. It may be of significance that as early as December 14, 1946 a resolution of the United Nations General Assembly was adopted for the purpose of undertaking actively the problem of general disarmament. St. Dept. Bull. XV, p. 1137 (Dec. 22, 1946).

Appellees submit that the war emergency is ended and that the attempt of the Government at this late date to continue rent controls in effect upon a basis of the war powers is a mere subterfuge and inimicable to the constitutionally guaranteed rights of owners of private rental property. Attention is called to the language of Mr. Justice Jackson in his concurring opinion in *Woods* v. *Miller Co.*, 333 U. S. 138:

The Government asserts no constitutional basis for this legislation other than this vague, undefined and undefinable "war power".

No one will question that this power is the most dangerous one to free government in the whole catalogue of powers. It usually is invoked in haste and excitement when calm legislative consideration of constitutional limitation is difficult. It is executed in a time of patriotic fervor that makes moderation unpopular. And, worst of all, it is interpreted by the Judges under the influence of the same passions and pressures. Always, as in this case, the Government urges hasty decision to forestall some emergency or serve some purpose and pleads that paralysis will result if its claims to power are denied or their confirmation delayed.

Particularly when the war power is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.

B. There was no housing shortage at the time of the enactment of Rent Act of 1949 and is none now.

In *Woods* v. *Miller Co.*, 333 U. S. 138, the Court states as follows:

> The legislative history of the present Act makes abundantly clear that there has not yet been eliminated the deficit in housing which in considerable measure was caused by the heavy demobilization of veterans and by the cessation or reduction in residential construction during the period of hostilities due to the allocation of building materials to military projects.

Apparently the Court was convinced that there then existed an acute shortage of rental units. This is not surprising since the government in that case offered a substantial amount of statistical data which, being unrefuted as it was, would point to the conclusion reached by the

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Court. It is unfortunate that appellees in that case did not or were not able to make available for the guidance of the Court the results of the survey made by the United States Bureau of the Census in April of 1947. Current Population Reports, Population Characteristics, Series P-21, Report 35, together with other related reports, was prepared as the result of that survey and bears the legend "Not to be Released Until August 24, 1947." Actually these reports were never generally circulated and obviously were not in the hands of the general public until after argument in the *Woods-Miller* case, although they were available to the government attorneys.

These reports indicate comparative data for the years 1940 and 1947 with respect to housing, family units, and general distribution of the population with reference to housing needs and facilities. Had pertinent portions of these reports been called to the attention of the Court, it might well have influenced its decision with respect to the housing situation.

Prior to the Congressional hearings on extension of rent control held in 1948, Mr. John Usher of Chicago had made an exhaustive study of these reports and constructed tables and charts indicating the relationship of the data therein contained to the housing situation. Appellees have set forth at the end of the brief as "Appendix A", the following:

1. Statement of John Usher, Chicago, Illinois, read by Honorable Fred E. Busbey at hearings before subcommittee of the House Committee on Banking and Currency on HR 4662, HR 4677, HR 4728 and HR 5018, 81st Congress, 2d session, at pages 330-336, including the introductory and closing remarks of Congressman Busbey.

2. Excerpts from statement of John Usher, Hearings before subcommittee of the Senate Banking and

Currency Committee on S. 434, etc., 81st Congress, 1st Session, at pages 784-789. (Figures referred to in these excerpts are contained in Plate 2.)

3. As "Plate 1", tabulation appearing as page 5 of Bureau of the Census Report above referred to.

4. As "Plate 2", tabulation prepared by Mr. Usher from census data derived from reports above referred to.

The survey embraced 34 principal metropolitan areas in the United States. An examination of Plate 1 to Appendix A will show at a glance that with one or two minor exceptions, in every one of these metropolitan areas the percentage of increase in population as between 1940 and 1947 was less than the percentage of increase in dwelling units for the same period. At the outset this should create a substantial doubt with reference to the validity and character of the alleged housing shortage which the government pleads as the basis for the continuation of rental controls.

Attention is invited particularly to the figures for the Scranton-Wilkes Barre area. It will be noted that between 1940 and 1947 population in this area decreased 15%. During the same period dwelling units available decreased 2%. As indicated in Mr. Usher's statement set forth in Appendix A, there were an abundance of vacant housing units in 1940 in this area, as there was throughout the United States. In 1947 there was an acute housing shortage in Wilkes-Barre. The area is still a controlled area. If there was no housing shortage in 1940 in the Scranton-Wilkes Barre area, and there are substantially more dwelling units per capita there today, than there were in 1940, it is submitted that there cannot be a "housing shortage" in any true sense, but rather a maldistribution of tenancy. It is submitted also that the figures set forth in Plates 1 and 2 indicate a similar, although slightly less accentuated, situation in the other metropolitan areas.

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Mr. Usher explains very clearly in his statement set forth in Appendix A the nature of this maldistribution of tenancy, the forces that brought it about and the influences which perpetuate it at the present time. Attention is invited to the fact that the statement of Mr. Usher, which Congressman Busbey read, was a statement previously given by Mr. Usher in person at the Senate Committee Hearing, and that as indicated in the introductory and closing remarks of Congressman Busbey, this statement and the data upon which it is based, was checked by the Senate Committee against the census figures and confirmed in every particular.

Mr. Usher points out in his statement that, during the war years, because of their greater earning power and the unavailability of other commodities, for which to spend their income, the American people were able to satisfy their inborne desire for spacious and luxurious housing by expanding and occupying more space per person and per family than they are accustomed to occupying during normal times in a free market when other commodities are available and when the cost of housing is consonant with general market conditions. He indicates that this condition was accentuated by the natural tendency of landlords to rent space suitable for a family with children, to one or two persons, since the rental was fixed and operating expenses would be minimized by renting to the fewest number of persons possible. Obviously, when the veterans were demobilized, they were compelled to occupy trailers, basements, and make-shift quarters, because the population which had stayed at home had spread out and occupied all of the available housing, and the veterans were not permitted to compete for this housing in a free and open market.

We shall not attempt even to abstract in full Mr. Usher's statement but we submit that a fair reading of this statement and an impartial evaluation of the figures set forth in the accompanying plates leads inevitably to the conclusion that such housing shortage as existed when the rent acts of 1948 and 1949 were adopted was solely the result of the continued imposition of rent controls.

As Mr. Usher points out in the statement made before the Senate Subcommittee, the maldistribution of housing would be rapidly corrected by decontrol. This seems self evident. Since the maldistribution has been created by rentals disproportionately low with reference to income and general commodity prices, the cure would seem to be readjustment of these prices to bring them into conformity with the general economy. This is precisely what was done in connection with hotel apartments, which were decontrolled during the term of the 1948 Rent Act, and recontrolled under the 1949 Act, with ceilings fixed as of March 1, 1949. The result of such decontrol was a moderate increase in rentals, immediate vacancies, and the appearance of columns of apartment hotel facilities for rent at ceiling in metropolitan Sunday newspapers. These advertisements still appear in undiminished volume, even after recontrol in 1949, because the ceilings upon recontrol were moderately higher, and as a result, the so-called housing shortage with reference thereto had vanished.

Prior to removal of ceilings upon meat prices, there was, at least in metropolitan areas, a severe shortage of meat. Immediately upon decontrol, prices advanced and the meat shortage became merely a war memory. This is the pattern followed by decontrol of all commodities, with the possible exception of certain items of durable goods with reference to which readjustment took somewhat longer. No one can

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doubt that there would today be a shortage of automobiles if price controls had not been removed.

Housing is a commodity subject to the economic laws of supply and demand, precisely like every other commodity. There is no reason to believe that housing would not follow precisely the same pattern as other commodities, when decontrolled, and experience proves this to be the case in connection with decontrol of apartment hotels and decontrol of other housing in the various areas where such decontrol has been effected. Since the enactment of the 1949 Act, a number of states and areas therein have decontrolled themselves. The public press has carried the reports of the experience of these communities, and these reports have not indicated either excessive increases in rentals or severe hardship or suffering on the part of anyone.

Nowhere, in press releases, or in the Congressional Record, or in the House and Senate reports, has the Housing Expediter, or any member of the House or Senate, or any other responsible public official suggested that continuation of rent controls will solve the housing problem. There has been abundant evidence to the effect that in many areas the problem has become increasingly acute as more and more space continues to be rented to fewer and fewer people. Obviously, the housing shortage is a result of rent control. If the continued housing shortage is to serve as an excuse and justification for continued rent control, then rent control is a permanent part of our economy.

Apparently the housing expediter and Congressional proponents of continued rent control feel that the problem will eventually solve itself by new construction of public and private housing. It is true, as Mr. Usher indicates in his statement to the Senate Subcommittee set forth in Appendix A, that the last couple of years has seen a record amount

of new construction. It is also true that virtually all of the private new construction has been of single family dwellings, many of which stand idle because the unfortunate people who were "frozen out" of ordinary rental housing cannot afford to buy these homes, and because the people who can and would normally buy these homes are "frozen into" rental units with abnormally depressed prices. This group, naturally, will not buy homes until rental ceilings are brought into conformity with the general economy. If rent controls are to continue until the problem is "solved" in the sense in which the proponents of rent control use that term, it will continue until a substantial segment of the American population is living in public housing. Meanwhile, private enterprise and private capital are deterred from construction of apartment buildings, because of rent control. While it is true that at the present moment such new construction is decontrolled, there is no good reason to assume that such new construction will not be controlled at a subsequent session of Congress. At the last session, Congress recontrolled certain units previously decontrolled, and a serious attempt was made to control new construction.

Meanwhile, under the present system, owners of controlled housing are compelled to undergo the systematic confiscation of their property. As indicated in a subsequent section of this brief, the Act makes no provision for a fair return on investment. Even the provision with respect to "fair net operating income" is not practically available to the owners of small rental properties, because the amount of relief that they might secure is disproportionate to the accounting and legal services requisite to secure such relief under the involved system promulgated by the Housing Expediter, requiring supporting statistical data going back over a period of twenty years to fill out his "Form 106".

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Apparently the Housing Expediter and the proponents of rent control are not content to restore normal housing conditions, but are attempting to create a visionary utopia at the expense of the small property owner, who frequently has his entire life savings invested in his property. In an announcement made by the Housing Expediter in Cleveland, Ohio, reported in the August 18, 1949 *Wall Street Journal*, he made the following statement:

> Until a family with an income of forty dollars, fifty dollars or sixty dollars a week can buy a house without strain, we have not solved the housing problem.

2. The Rent Act of 1949 delegates legislative power to the Housing Expediter without proper standards in violation of the Constitution of the United States.

The Housing and Rent Act of 1949 delegates legislative power to the Housing Expediter in so far as it grants him unbridled and unfettered power to issue regulations having the force of law in connection with speculative and manipulative practices. The Act provides in Section 209:

> Whenever in the judgment of the Housing Expediter such action is necessary or proper in order to effectuate the purposes of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any controlled housing accommodations, which in his judgment are equivalent to or are likely to result in rent increases inconsistent with the purposes of this Act.

The Housing and Rent Acts of 1947 and 1948 specifically provided for regulation of eviction proceedings. The 1947 Act permitted actions in good faith by the landlord seeking possession for his immediate personal use, or for the imme-

diate and personal use of a member of his family. The 1948 Act, in addition to the above grounds, regulated actions by shareholders of cooperative corporations and prohibited actions for possession by such shareholders, unless 65% of the shareholders were tenants in possession.

The above quoted language of the 1949 Housing and Rent Act with reference to speculative and manipulative practices appears to have been originally used in connection with other provisions with reference to hoarding, etc., in the Emergency Price Control Act of 1942. Section 102 (d) of the Emergency Price Control Act of 1942, Title 50, App. 902 (d) provided:

> Whenever in the judgment of the Administrator such action is necessary or proper in order to effectuate the purpose of this Act, he may, by regulation or order, regulate or prohibit speculative or manipulative practices (including practices relating to changes in form or quantity) or hoarding, in connection with any commodity, and speculative or manipulative practices or renting or leasing practices (including practices relating to recovery of the possession) in connection with any defense area housing accommodations, which in his judgment are equivalent to or are likely to result in price or rent increases, as the case may be, inconsistent with the purposes of this Act.

In this connection it should be remembered that the Emergency Price Control Act was enacted shortly after the declaration of war and while there was actual danger of invasion of the continental United States. Moreover, since the measure was enacted only fifty days after the attack upon Pearl Harbor, it was impossible for Congress or for any person to know the extent of the war effort which might be needed to insure victory. Congress knew that drastic action must be taken immediately or that dangerous inflationary practices would spread beyond con-

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trol. Congress knew that hundreds of varying types of businesses must be covered and that a workable scheme for regulating the prices of thousands of differing commodities had to be devised. Furthermore Congress must have suspected that selfish individuals might attempt to profit by hoarding, speculation and "black market" operations. The methods which such persons might devise could not be foretold in advance. Thus, it was impossible for Congress by legislation to devise a statute which would cover thousands of products and foresee hundreds of schemes of manipulation and profiteering. In addition any plan devised must aid and not hinder the production of essential military goods. The only thing Congress could do and did, was to grant regulatory power to an administrative official under standards sufficient under the circumstances at the time the legislation was passed to effectuate the purposes of the Act.

Contrast the situation at the time of the enactment of the Housing and Rent Act of 1949. All controls had been removed on other commodities for a period of two years, Congress had already in prior legislation enacted specifically the grounds upon which evictions might be granted. Only one field of operations was covered, namely the renting of housing accomodations. The fear and potential danger of invasion of our country had ceased. The purpose of the 1949 Act is to decontrol maximum rents as rapidly as possible.

In the Housing and Rent Act of 1947 Congress expressed approval of eviction proceedings by a landlord who desired the premises involved for his own personal use or for the personal use of a member of his immediate family. The Act of 1948 retained the foregoing grounds for eviction and made provisions for regulating evictions *supra*. If a bona fide purchaser of an interest in real

by purchasers of shares in cooperative housing buildings. The right to evict by such purchasers was prohibited unless 65% of the shareholders were tenants in occupancy. The Act also regulated evictions in cases of governmental housing developments.

The Housing and Rent Act of 1949 repeals all of the foregoing regulations with reference to evictions, and delegates to the Housing Expediter power to prohibit or regulate manipulative and speculating practices which in his judgment may result in increases in rents contrary to the purposes of the Act. Congress instead of legislating on the subject repealed its law on the subject and delegated power to act to the Housing Expediter. In effect this was a delegation to the Housing Expediter to make laws. *Panama Refining Co.* v. *Ryan,* 293 U. S. 388; *Schechter* v. *United States,* 295 U. S. 494. Certainly the regulations actually promulgated and applying to the appellees in this case bear no relationship to any speculative or manipulative practices. Appellees in good faith and in reliance upon existing law (Housing and Rent Act of 1947) paid substantial considerations for interests in the property, and were at the time of purchase entitled to immediate possession. It is certainly not a speculative or manipulative practice to seek possession of one's own property for his own use. No increase in rents can result. Furthermore Regulation Sec. 825.6 (R. 3) as construed by the Housing Expediter is retroactive without direct or indirect authorization by the Act.

It is submitted that Section 206 of the Housing and Rent Act of 1949 delegates unbridled and unfettered legislative power to the Housing Expediter. *Panama Refining Co.* v. *Ryan, supra* and *Schechter* v. *United States,* property who desires to occupy the property for his own

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personal use, can be prohibited from doing so by a retroactive regulation of a federal administrator for a period of 18 months upon the theory that he is regulating a speculative and manipulative practice, then the Housing Expediter possesses unlimited power to prevent any action for possession by any purchaser whatever. Such power has resulted in a virtual confiscation of rights in property, and marks the end of the traditional concept of ownership of property.

Throughout the length and breadth of the Act the Housing Expediter is given such broad discretion with respect to every regulatory aspect thereof, that it is believed that the total delegation transcends anything heretofore sanctioned by the court, and is definitely in contravention of the doctrine enunciated in *Panama Refining Co.* v. *Ryan, supra*, and *Schechter* v. *U. S., Supra.* One further instance of a major delegation to the Housing Expediter requires specific mention and objection, the delegation to him of the power to fix "fair net operating income" under Section 204 (b) (1). This goes to the very essence of the Act and involves the basic right of the landlord.

A majority of Congress was unwilling to extend the Act in 1949 without the inclusion of some provision guaranteeing a reasonable return to the landlord. Congress was unable to agree concerning the form which this guarantee should take and consequently delegated that purely legislative, non-delegable question to the Housing Expediter and/or the Local Advisory Boards by the provisions of Sec. 204 (b) (1) providing for the landlord to receive a "fair net operating income." The term "fair net operating income" is one without any fixed meaning in our law or in the English language, and is not defined in the Act.

The general significance and relevancy of Section 204 (b) (1) is discussed later under the general due process argument with respect to rate of return.

3 and 4. The Act Violates the Due Process Provisions of the Fifth Amendment in That It Denies the Owner of Rental Property a Fair Return.

In *Bowles* v. *Willingham,* 321 U. S. 515, 516, a similar contention of denial of due process was raised and rejected by the Court. The Court indicated that in view of the emergency conditions under which the regulatory power had to be exercised, it was simply impossible to apply the standards which have traditionally and invariably been insisted upon by this Court with reference to computation of rate of return in public utility cases. It must be recalled that at the time of that decision the Federal government was undertaking to regulate the price of every type of commodity as well as wages and costs of various facilities. The technique employed was the only one available under the circumstances, in substance simply to "freeze" the entire economy as of a certain date and then permit relief in certain "hardship" situations. Obviously it was impossible to attempt a periodic redetermination of the multitudinous items of economic data subject to control.

In the case of *Bowles* v. *Willingham, supra,* this Court stated:

> A nation which can demand the lives of its men and women in the waging of that war is under no constitutional necessity of providing a system of price control on the domestic front which will assure each landlord a "fair return" on his property.

It should be noted also that under those circumstances of frozen economy no individual or segment of the economy

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was likely to be too seriously injured since all factors of the economy retained their relative positions. While it is true that a manufacturer could not increase the price of a shirt, it was also true that the price at which he bought his materials was frozen, that the wages he paid his employees were frozen, and that all of his items of expense were likewise frozen. The owner of rental property was in no different position from the rest of the economy. This general condition prevailed down until the end of the "shooting" war and for some brief time thereafter until the general repeal of controls.

The owner of rental property alone found himself still subject to controls. He no longer operated his business in a controlled or frozen market but in an open market where his employees and suppliers, including taxing bodies, were able to charge whatever the market would bear. He was no longer able to maintain his relative position in the economy. He found himself in a position where his own rents were still frozen on a 1941 level, and where all of his expenditures in connection with his business, as well as his own personal demands for living which had to be drawn from the operation of that business, were on a new post war level. It is common knowledge that the general price level has at least doubled since 1941.

At the time that price and rent controls were originally imposed, the right which the landlord and other business people in the economy had to have their rate of return determined in accordance with settled principles of constitutional law was for the most part a theoretical and abstract right, having few practical economic implications. Doubtless the emergency of actual war justified the temporary suspension of this right. When the war was concluded and other commodities had been decontrolled this right became a vital practical matter, and the refusal on

the part of the Government to recognize it began to operate as a flagrant confiscation of his property.

When this Court decided *Bowles* v. *Willingham, supra,* in 1944, it certainly was impossible for any machinery to be set up for the purpose of according to the landlord the fair return on fair investment guaranteed by the Constitution even to public utilities and consistently recognized by this Court. What is our situation today? Such machinery is available. Congress has written into the 1949 Act a provision for determining ceilings on rental property and presumably feels that the Housing Expediter has sufficient resources and facilities at his command to make such determinations. It is no longer impossible to accord to landlords their constitutionally guaranteed rights, and they certainly had a reasonable right to expect that if rent controls were continued in 1949, their constitutional rights would be recognized. They have not been. The provision of Section 204 (b) (1) is as follows:

> In making and recommending individual and general adjustments to remove hardships or to correct other inequities, the Housing Expediter and the local boards shall observe the principle of maintaining maximum rents for controlled housing accommodations, so far as is practicable, at levels which will yield to landlords a fair net operating income from such housing accommodations. In determining whether the maximum rent for controlled housing accommodations yields a fair net operating income from such housing accommodations, due consideration shall be given to the following, among other relevant factors: (A) Increases in property taxes; (B) unavoidable increases in operating and maintenance expenses; (C) major capital improvement of the housing accommodations as distinquished from ordinary repair, replacement, and maintenance; (D) increases or decreases in living space, services, furniture, furnishings, or equipment; and (E) substantial deterioration of the housing accommodations, other than ordinary wear and tear, or

failure to perform ordinary repair, replacement, or maintenance.

It is definitely our position that the owner of rental property, who has never made a dedication of his property to the public use, but who has had such use thrust upon him, cannot occupy a less advantageous position insofar as the quantum of his constitutional rights are concerned than that enjoyed by a public utility which has made a voluntary dedication of its property to the public use. It seems that this proposition is one of those which is too obvious to require argument. Appellees are unable to cite legal authority to support it since landlords find themselves in an anomolous position, without precedent, since it has not before been necessary to raise the issue, except in cases decided during the war at a time when, as indicated, it was a matter of necessity to suspend such rights.

The rule is well settled by this Court that a public utility is entitled to have its rates so fixed that after deducting therefrom operating expenses, including reasonable allowance for depreciation and obsolescence, the net income remaining will bear that percentage to the "rate base" which is normally earned by private industry involving equal risk at that time and place; and that the rate base must be fixed at the fair and reasonable value of the properties used and useful in the enterprise.

> See *Smyth* v. *Ames*, 169 U. S. 466, 547; *San Diego Land & Town Co.* v. *National City*, 174 U. S. 739, 757; *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19, 41, 53; Minnesota Rate Cases (*Simpson* v. *Shepard*), 230 U. S. 352, 434; *Missouri ex rel. Southwestern Bell Teleph. Co.* v. *Public Serv. Commission*, 262 U. S. 276, 287.

The rule is exemplified by the following language of this Court in *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400:

> But in determining present value, consideration must

> be given to prices and wages prevailing at the time of the investigation; and, in the light of all the circumstances, there must be an honest and intelligent forecast as to probable price and wage levels during a reasonable period in the immediate future. In every confiscation case, the future as well as the present must be regarded. It must be determined whether the rates complained of are yielding and will yield, over and above the amounts required to pay taxes and proper operating charges, a sum sufficient to constitute just compensation for the use of the property employed to furnish the service; that is, a reasonable rate of return on the value of the property at the time of the investigation and for a reasonable time in the immediate future. • • •

The Housing and Rent Act of 1949 contains no formula capable of providing a fair return to the landlord upon the reasonable value of the property used as controlled housing accommodations. While the original draft of the legislation proposed by the House of Representatives contained a provision for a "reasonable return on the reasonable value of such property" the foregoing language was eliminated during the Joint Conference. (Conference Report 332, March 28, 1949.) It seems clear that the Congress intended to provide and did provide landlords a "fair net operating income" only, without regard to the value of the landlord's investment. The relevant factors specified in the law relate only to factors constituting operating income, and as a practical matter exclude from the computation of "fair net operating income" any consideration of the reasonable value of the property used.

In *Bowles* v. *Willingham, supra,* at page 517, this Court pointed out "that during the first World War the statute for the control of rents in the District of Columbia provided machinery for securing to a landlord a reasonable rental", and "under price-fixing statutes such as the Na-

tural Gas Act of 1938" Congress "has provided for the fixing of rates which are just and reasonable in their application to particular persons or companies". This Court pointed out that Congress "departed from that pattern" when it came to the Emergency Price Control Act of 1942 and attempted to regulate prices and rents upon a class rather than upon an individual basis.

It seems that in the Housing and Rent Act of 1949 Congress has again reverted, in part at least, to price fixing upon an individual basis. In doing so, however, Congress has omitted to provide any means for providing a fair return upon the value of the property used. Owners of property used for a public purpose without the consent of the owners are clearly entitled to reasonable compensation. In *Chicago M. & St. P. Ry. Co.* v. *Minnesota,* 134 U. S. 418, at 418, this Court said:

> If the company is deprived of the power of charging reasonable rates for the use of its property, and such deprivation takes place in absence of an investigation by judicial machinery, it is deprived of the lawful use of its property, and thus in substance and effect, of the property itself, without due process of law, and in violation of the constitution of the United States; and, in so far as it is thus deprived, while other persons are permitted to receive reasonable profits upon their invested capital, the company is deprived of the equal protection of the laws.

In the case of *Smyth* v. *Ames, supra,* this court defined the elements of a reasonable rate:

> We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stocks,

> the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case.

It is submitted that the Housing and Rent Act of 1949 is fatally defective in that the essential elements of present market value, and present and original cost of construction of the property, as well as other vital elements necessary to determine the value of the property used have been removed from the consideration of the Housing Expediter in connection with the formula for his use in determining "maximum rents". Any rentals computed without regard to this factor must of necessity be confiscatory.

It may be argued that there is no taking of property for a public use, in violation of the Fifth Amendment to the Constitution, required by the Housing and Rent Act of 1949. The *Bowles* v. *Willingham* case, *supra*, held that there was no such taking under the Emergency Price Control Act of 1942 because a provision of that law provided that nothing in the Act shall require any person to sell any commodity or to offer any accommodations for rent. The 1949 law contains a similar provision. The court in *Block* v. *Hirsh*, *supra*, stated that "the power to go out of business, when it exists, is an illusory answer to gas companies and waterworks". It is even more illusory in the case of a use fastened upon the land. Even if a landlord determined not to rent his apartments, he still would be subject to real estate taxes, interest upon indebtedness, and other fixed charges so long as he retained title to the property. It is to be noted, however, that even the right to withdraw his property from the rental market, has, for all practical purposes been denied to a landlord. Controlled Regulation

825.6 prohibits such withdrawal from the rental market until a waiting period of six months has elapsed, during which time a landlord is compelled to rent his property to tenants against his will. For this period, at least, there is a taking of property for a public use.

Appellee Lumsden purchased his interest in the property in question in March 1948. Under the Housing and Rent Act then in effect he was entitled to immediate possession provided that he desired the property for his own use. The Housing and Rent Act of 1948 and the regulations of the Housing Expediter promulgated under the Housing and Rent Act of 1949 have effectively barred appellee from occupying his own property as a dwelling and have compelled him against his will to provide housing accommodations to a member of the public and without reasonable compensation. That this constitutes a taking there can be no doubt.

5 and 6. The Rent Act of 1949 Neither Allows Hearing nor Judicial Review.

The Rent Act of 1949 is invalid for the reason that there is neither judicial review available to the landlord nor is there the right to a hearing before any administrative officer.

Nowhere in the Act is provision made for an opportunity for the landlord to be heard and the Administrative Procedure Act is specifically made inapplicable by the provision of Section 210 of the Rent Act of 1949, which reads as follows:

> Sec. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;"

The rule is well settled beyond any doubt that a person is constitutionally entitled to be heard at some point before he

can be deprived of property by specific order directed to him. In its brief appellant concedes (B. 44-45) that the landlord is not entitled to any hearing before an order can be entered against him. Appellant uses the following language:

> If the point of this objection is that the Expediter may thereby enter an order or regulations fixing rents without consulting landlords or providing them with a hearing it is also wanting in merit since no such requirement is imposed by law. (*Bowles* v. *Willingham*, 321 U. S. at pp. 519-520).

At the point cited in *Bowles* v. *Willingham*, i. e., 321 U. S. at page 520, the Court uses the following language:

> Here Congress has provided for judicial review of the Administrator's action. To be sure, that review comes after the order has been promulgated; and no provision for a stay is made.

The judicial review referred to in *Bowles* v. *Willingham*, *supra*, is that provided under the Emergency Price Control Act of 1942 (50 U. S. C. App. 901 et seq.). ~~Title 1, Section 2 (m) of said act provides in pertinent part as follows~~:

> Any person aggrieved by any action of any agency, department officer or employee of the Government contrary to the provisions hereof, or by the failure to act of any such agency, department officer, or employee, may petition the district court of the district in which he resides or has his place of business for an order or a declaratory judgment to determine whether any such action or failure to act is in conformity with the provisions hereof and otherwise lawful; and the court shall have jurisdiction to grant appropriate relief. The provisions of the Judicial Code as to monetary amount involved necessary to give jurisdiction to a district court shall not be applicable in any such case.

There is no similar provision in the Rent Act of 1949, and consequently the landlord has no opportunity to be heard either before the administrative officer or before the court

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with respect to the merits of his controversy. It is doubtless true, of course, that even in the absence of statutory provision the court would give relief against arbitrary action. This, however, is not, for purposes of due process, an adequate substitute for one's right to be heard upon the merits. *Southern Ry.* v. *Virginia,* 290 U. S. 190.

Obviously no right to hearing before the Housing Expediter can be implied in view of the presence in the statute of Section 206 (g) which provides as follows:

> The Housing Expediter shall not publish or disclose any information obtained under this Act that such Housing Expediter deems confidential or with reference to which a request for confidential treatment is made by the person furnishing such information unless he determines that the withholding thereof is contrary to the public interest.

With regard to this latter point, see *United States* v. *Abilene & S.R.Co.,* 265 U. S. 286. In that case this Court invalidated an order of the Interstate Commerce Commission because in entering such order the commission had relied upon parts of the annual reports filed by the carrier without the same having been formally introduced into evidence. The Court said at page 289:

> The objection to the use of the data contained in the annual reports is not lack of authenticity or untrustworthiness. It is that the carriers were left without notice of the evidence with which they were in fact, confronted, as later disclosed by the finding made. The requirement that, in an adversary proceeding, specific reference be made, is essential to the preservation of the substantial rights of the parties.
>
> The right of the carriers to insist that the consideration of matter not in evidence invalidates the order was not lost by their submission of the case without argument, and by their acquiescing in the suggestion that the presentation of a tentative report by the examiner be omitted. While the course pursued denied

to the Commission the benefit of that full presentation of the contentions of the parties which is often essential to the exercise of sound judgment, it cannot be construed as a waiver by the carriers of their legal rights. The general notice that the Commission would rely upon the voluminous annual reports is tantamount to giving no notice whatsoever. The matter improperly treated as evidence may have been an important factor in the conclusions reached by the Commission. The order must, therefore, be held void.

In view of the foregoing there would seem no escape from the conclusion that the Act is invalid as repugnant to the Fifth Amendment of the Constitution.

7. The Rent Act of 1949 Is Fatally Discriminatory.

The Rent Act of 1949 deprives landlords of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States, in that it arbitrarily discriminates in favor of newly created housing units, which are entirely decontrolled, and against existing housing units which remain controlled;[1] in that it discrimi-

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[1] Section 202 (c) (3) of the Housing and Rent Act of 1949 provides that the provisions do not apply to:

"Any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are housing accommodations created by a change from a nonhousing to a housing use on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947: *Provided, however,* That any housing accommodations resulting from any conversion created on or after the effective date of the Housing and Rent Act of 1949 shall continue to be controlled housing accommodations unless the Housing Expediter issues an order decontrolling them, which he shall issue if he finds that the conversion resulted in additional, self-contained family units as defined by regulations issued by him: *And provided further* That contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect; or (B) the construction of which was completed on or after February 1, 1945, and prior to February 1, 1947, and which between the date of completion and June 30, 1947, both dates inclusive, at no time were rented (other than to members of the immediate family of the landlord) as housing accommodations;"

nates in favor of certain property owners whose tenants voluntarily agreed to increases in their rentals up to 15% and against other property owners whose tenants refused so to do;[2] in that it discriminates in favor of certain property owners who had comparatively high rental rates in effect on March 1, 1942 and against property owners who had comparatively low rental rates in effect on that day; in that it discriminates arbitrarily in favor of so-called apartment hotel owners by fixing their maximum rentals as of March 1, 1949, after a period of decontrol and adjustment of rentals to present economic conditions, and against owners of unfurnished units, furnished units, and rooming houses,[3] whose maximum rentals are still fixed as of March 1, 1942; and in that it discriminates in favor of owners of

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[2] Section 204 (b) (2) of the 1949 Act provided:

"In any case in which a valid written lease with respect to any housing accommodations was entered into and filed in accordance with the provisions of the subsection (b) as then in effect, and such lease was in effect on the effective date of the Housing and Rent Act of 1949, such housing accommodations shall be subject to the provisions of this title and, until such lease is terminated or expires, the maximum rent for said accommodations shall be the rent set forth in said lease.

Section 202 (b) (2) of the Housing and Rent Act of 1948 referred to above was:

"In any case in which a landlord and tenant (including any new tenant) on or before December 31, 1948, voluntarily enter into a valid written lease in good faith (at any rental agreed upon in the lease, but not in excess of 15 per centum over the maximum which in the absence of a lease would be in effect with respect thereto on the date of enactment of the Housing and Rent Act of 1948) with respect to any housing accommodations for which a maximum rent is in effect under this section, and such lease takes effect on or after the effective date of the Housing and Rent Act of 1948 and expires on or after December 31, 1949, and if a true and duly executed copy of such lease, with the Housing Expediter, such housing accommodations shall not thereafter be subject to any maximum rent established or maintained under the provisions of this title unless such lease is terminated before March 31, 1949.

[3] Section 204 (h) of the Housing and Rent Act of 1949 provides:

"*Provided*, That in the case of those controlled housing accommodations in hotels which were not included within the definition of controlled housing accommodations' as such definition read prior to the effective date of the Housing and Rent Act of 1949, the maximum rent shall be the rent in effect for such accommodations on March 1, 1949."

so-called apartment hotels located in cities of less than 2,500,000 inhabitants and against the owners of such hotels in Chicago and New York City. [4]

The type of discrimination involved throughout the provisions above referred to is characterized by the last one, with reference to the discrimination against apartment hotels located in cities of two million five hundred thousand inhabitants or more. This provision obviously applies only to Chicago and New York City. It will be noted that only the apartment hotels in those cities are still controlled and not other apartment hotels similarly situated in the defense-rental area. The large centrally located hotels are decontrolled anyway, inasmuch as they cater to transients. The effect of this provision is that outlying apartment hotels in the city of Chicago, for example, are controlled, whereas competing hotels, in some instances immediately across the street in suburban Evanston and Oak Park, are decontrolled. The unfairness involved in this discrimination is evident, and it seems impossible for anyone to argue that any reasonable classification is involved. It will be recalled that the unit of control in previous rent acts and under the Emergency Price Control Act has always been the rental area, including territories adjacent to the city itself. For the first time in the Rent Act of 1949 the city, which constitutes only a part of the economic unit, is singled out for discriminatory treatment.

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[4] Section 202 (c) (1) of the Housing and Rent Act of 1949 provides:

"(c) The term 'controlled housing accommodations' means housing accommodations in any defense-rental area, except that it does not include—

(Hotels)

(1) (A) those housing accommodations, in any establishment which is located in a city of less than 2,500,000 population according to the 1940 decennial census and which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service."

Conclusion.

In concluding, appellees desire to invite the attention of the Court to the rule which it has previously laid down and adhered to that in matters of due process the Court is not restricted to mere determinations of form, but will scrutinize the entire situation and rule accordingly. *St. Joseph Stock Yards Co.* v. *United States,* 298 U. S. 38. It is submitted that all Constitutional basis for the continued imposition of rent controls has ceased to exist and that the only purpose which Congress can serve by continuing such controls is to confer a supposed benefit upon one segment of the population at the expense of another. The tendency to yield to political pressure in such matters is frequently irresistible. For the most part the landlords principally hurt by these controls are small people of moderate means, who have secured their property through thrift and years of privation. They are not an organized, politically articulate group, and have suffered accordingly from the inequality of political pressure.

The judgment below should be affirmed.

Respectfully submitted,

KENART M. RAHN,
GEORGE S. STANSELL,
Attorneys for Certain Appellees.

APPENDIX A.

Statement of John Usher, Hearings before House Committee on Banking and Currency on H. R. 4662, etc., 80th Cong., 2nd Sess. at pp. 330-336.

Mr. Busbey: Mr. Chairman, I wish to thank you and the committee for the privilege of appearing here this morning on behalf of a very good friend of mine in Chicago, Mr. John Usher, who has made quite a study of this housing and rent problem.

He testified before the Senate Banking and Currency Committee a week ago Saturday, on January 31, and I would like to inform the committee that since his testimony the Committee on Banking and Currency of the Senate have checked his figures given in the testimony and found them to be correct.

I respectfully call your attention to the questioning that appears in the hearings of the Senate Committee after Mr. Usher had presented a prepared statement which is very enlightening.

With the permission of the committee, I would like to read the statement of Mr. John Usher. Mr. Usher was to appear in person today, but unfortunately he is confined to a hospital in Chicago and cannot be here.

This is the statement of Mr. Usher.

STATEMENT OF JOHN USHER, CHICAGO, ILL., READ BY HON. FRED E. BUSBEY.

My name is John Usher. My address is 6316 Wentworth Avenue, Chicago, Ill.

Mr. Chairman and members of the committee, I am an engineer and I have been head of the business that I operate in conjunction with my brothers for over 35 years in Chicago. In my business I have taken part in the construction of thousands of housing units in the City of Chicago. My brothers and I have personally constructed and operated hundreds of rental units varying in size from three units per building to as many as 200 in one building.

I am an owner of rental housing. I believe that rental owners are the poorest organized group in this country.

You are ordinarily inclined to think that the real-estate boards are the people to weigh and discuss this problem. Actually, such boards and associations are made up of brokers and agents, and I believe very few of these men are owners. This has been an unfortunate thing for the great mass of owners who have had no representation whatever. It is not the real-estate men who have been hurt, but the owners, the majority of whom own small buildings containing only a few rental units.

You have listened to the injustices, unfairness, and un-American actions that have been going on under rent control for the past several years. I am not going to deal with any of these matters, although they are of great importance. The approach to the housing problem I intend to give you is one facet of the picture that has been completely overlooked by most people.

Being an engineer, it is always my thought that things must work out properly mathematically; otherwise, there is something false in the picture. I intend to discuss with you the population of metropolitan Chicago as well as the exact housing situation as shown by actual Government figures. You, gentlemen, are aware that every 10 years the Bureau of Census makes a complete break-down of the population and housing throughout the United States. These figures are remarkable in their accuracy and their break-down in that they give you nearly every type of information you may desire.

Early in 1947 your Joint Congressional Housing Committee authorized the Department of Commerce to make a special survey on housing and population. That was surely a most intelligent approach to this subject. These 1947 figures were made available in the latter part of last August, but, unfortunately, they have had no publicity in the press and were not distributed, but withheld from the general public, except for those who made personal inquiry for the information.

I think I should tell you just how this survey is made so that you may know how accurate it is, and why the survey has such a significant bearing on the housing problem which, until recently, has been almost completely overlooked. The Department of Commerce has the Bureau of Census work in conjunction with the mailman in every district and he charts every type of housing accommodation

in his district showing the size, type, and all the facts about the housing accommodation. He then lists the various people living in these units, and, usually, it is unnecessary for him to make any personal inquiry because he knows who the people are, whether they are married or single, or doubled up, and so forth.

My son and I have spent a great deal of time in the last 3 months studying and analyzing the figures of 1940 and these new figures of 1947. It was necessary for us to spend considerable time in the Department of Commerce in Chicago, as well as contacting the Department of Commerce, Bureau of Census, in Washington. We now have worked out all the facts and figures necessary to prove that rent control, and rent control alone, is the entire cause of our present false housing shortage, not only in Chicago, but in all the other 31 metropolitan areas which this special survey covered.

The Bureau of the Census breaks down the population in white and nonwhite, as well as male and female, and shows married couples, single people, and all the other facts necessary in dealing with each metropolitan district.

I will talk now about only the white population and white housing because in our situation in Chicago the white population and nonwhite population, as well as the white housing and nonwhite housing, are two separate matters and have little or no influence on one another.

In 1940 we find that with people free to occupy as much housing space as they were willing to pay for, we had approximately 40,000 vacant white dwelling units. In the last 7 years we have constructed approximately 64,000 new white dwelling units. This made a total of 104,000 extra dwelling units available for any increase in white population that might occur during these 7 years.

From these 104,000 units we must subtract a large number of apartments taken out of the class of dwellings by rearranging and renting them for commercial offices such as insurance offices, doctors' offices, and so forth, in order to avoid rent control. It was also necessary to take away a certain number of fire losses and demolition of old housing units, so that by April, 1947 we find that we had only a net of 73,000 dwelling units over and above what we had in 1940 which were available for the added white population that might have come into Chicago during the past 7 years.

Now we come to the amazing fact that during the last 7 years the increase in white population amounted to only 27,000 people, and the break-down of this 27,000 increase is still more amazing when we find that with all the boys home from war there was an actual loss of 6,000 in male population, but an increase of 33,000 in female population, giving us a net increase in population of only 27,000.

Of course, these figures of 74,000 extra complete housing units and only a 27,000 female increase in population is paradoxical because we can see all around us people seeking housing and unable to get it. If it were not for the fact that these were Government figures we would not accept them to be true.

These figures are true, and a simple analysis of what took place from the spring of 1942 makes them readily understandable. What actually took place was the spreading out of the people using more space than they had ever used before because of the rents remaining low, while incomes increased tremendously. Before giving you the actual figures on this spreading out, I would like to tell you why this took place.

In 1942 rents were frozen at less than 60 per cent of the amount necessary to show a fair profit on a new comparable unit, although all other principal items in our economy were frozen at a price that would be equal to the cost plus a profit. This was a unique situation—rents frozen at slightly over one-half the proper price, and everything else at cost plus profit. Almost simultaneously with this maladjusted rent freeze came the tremendous increase in the purchasing power of the people. Thus, the present great disparity between rental housing as compared to the balance of our economy.

With the war came an increase of workers per household, also came high wages, price controls, and rationing. Very quickly, there was a housing shortage. Millions of men went into the armed forces—still, there was a housing shortage. Here we had a confusing paradox—a large oversupply in 1941, and a shortage in 1942. The more that left for war, the shorter housing became, and after 10,000,000—300,000 from Chicago—had left for war our housing shortage became a national problem. Some southern and eastern cities that lost population not only to the armed forces, but also had many of their civilians leave for the West to seek higher wages, found a housing shortage.

This paradox is explained as follows:

As the war progressed, and wages skyrocketed, people at home found themselves with surplus money. Because of rationing, they found it difficult to buy anything except the bare necessities of life. But they could and did buy for their use and enjoyment, at one-half its normal price, more housing, which was not rationed. Unconscious hoarding of housing by the renters began, and the so-called housing shortage resulted. This was the result of controlling the owners but not the renters.

American people have a great inborn desire to occupy spacious and luxurious housing. Given surplus money from the skyrocketing of wages, here was their chance to satisfy this desire. Working girls, bachelors, widows, widowers, and divorced people who shared occupancy and divided the rent, decided to have their own apartment or house under the frozen ceilings, at a price of about one-half of the proper rental. Married people without children spread out into larger apartments. Rents were fixed, costs increased, so owners, trying to economize, caused further shortage by insisting on minimum adult occupancy, regardless of the size of the unit they had to rent.

Another factor contributing to the false housing shortage is that owners of two- to eight-apartment buildings now hold vacancies off the market and find, by offering the vacancy with the sale of the building, that they can get much higher prices for the building from people who are forced to buy in order to get a roof over their head.

Other large numbers of rental housing units have been converted to commercial rental units where there is no ceiling. According to data read before the Banking and Currency Committee last June by a Midwest Senator, these last two items alone have taken 1,690,500 units out of the national rental market.

The Bureau of Census figures show clearly that millions of such spreading-out moves took place, and that these people had over-expanded into more spacious housing than they ever had enjoyed before.

By the end of 1942 nearly everyone was frozen in or out, regardless of the size of housing unit needed. Of course, this was followed by the usual grey market which is now prevalent whenever a vacancy occurs. Gentlemen, please note here that this great false housing shortage occurred

only a matter of months after rent controls were inaugurated. Since then, in the last several years, it has merely become more aggravated and it will continue to get worse.

Now here is what the figures show on the spreading out of the people.

In 1940 there were 64,000 complete white rental units occupied by one person, but in 1947 this figure increased to approximately 100,000 complete rental units occupied by one person. This was an increase of over 50 per cent in single occupancy and took up 36,000 extra dwelling units.

Today one out of seven rental dwelling units is occupied by one person. In 1940 there were 291,000 complete white units occupied by two persons, but in 1947 there were 340,000 complete units occupied by two persons. This took up another 49,000 extra units. Of course, there was a spreading out of all the other groups as well. Now, considering only these two groups, we have used up 85,000 dwelling units, wherein, heretofore, we have shown there was only a total of 73,000 of all types of dwelling units available.

Gentlemen, I could stop right here and that should be your complete answer; however, I would like to give you a few more figures.

The single and double occupancy group make up only 25 per cent of the white rental population, and they are now occupying almost 50 per cent of the white rental housing units. Heretofore, I have told you that rental housing has been going off the market in order to escape rent control. There have been 51,000 rental units in Chicago turned into the commercial, co-op, and ownership group in the last 7 years. However, the most amazing figure is the fact that there are 442,000 less people living in the remaining 732,000 white rental units.

When we consider that most of this spreading out and escaping by conversion to commercial property took place in the early part of rent control you can see how impossible it might be ever to hope to get enough rental units under rent control.

This shows we quickly used up the 73,000 total available dwelling units, plus thousands that went into commercial and other uses. Why does anyone believe that this spreading out and converting will not continue more and more when it is to the benefit of the owner in all cases to take in the least number of people regardless of the size of the housing unit he has for rent?

A fast orderly removal of rent controls is the only proper cure. This removal of rent ceilings will force those who are hoarding housing to move back into the comparative housing they had in 1941, or into what they can afford in a free market. This will produce a sufficient number of apartments to take care of all the present shortage.

The realization of a fast approaching free market will also bring forth thousands who have ample means to build or buy, who now, as renters, complacently use cheap rental and spacious housing at the expense of the owners. These are the people who should build or buy homes, not the young veteran or newlyweds who definitely want rental housing units.

Today there are a great number of married couples, widows *et al.*, living in large rental units that would like to move into smaller units, and in a free market this would occur, making space for the larger families. Under our present situation all are frozen in as well as out.

Gentlemen, if for any any reason you do not see fit to remove entirely rent controls, I cannot see how anyone could object to taking off rent controls on the renters who are hoarding housing by occupying more space than they need and more than they ever had before in a free market. I have given a great deal of thought to decontrol and I have definite ideas on how it can be done scientifically and orderly, and should you care for my opinion on the matter I will be glad to give it to you at any time.

Had rationing of housing followed controls people could not have occupied more housing than they did in 1941, and we surely would not have our false housing shortage today.

What really exists is a maldistribution of housing, with certain people enjoying more housing under rent ceilings than they need or can afford in a strictly competitive market, while great numbers of others are badly crowded or frozen out entirely, many of whom are able and willing to pay much higher rent than those now occupying these units.

The rent-control authorities insist that rent controls must stay until other Government agencies promote enough building to cure the housing shortage. The longer this theory prevails, the more serious our situation will become.

When rent controls of present housing are released, we will find a substantial increase in rents. Great numbers of people, now occupying more housing than they can afford

in a free market, will be forced to retrench, and this will result in millions of vacant housing units. In the meantime, the Government will have financed millions of new housing units which will have been sold to veterans and others based on the present high prices and false shortage.

When these vacancies occur, a market collapse of all housing values will result, and the veterans and other such purchasers will be the real losers, to say nothing of the great loss to the Government.

In connection with this, just a word about inflation. Our Government has been guaranteeing about a billion dollars a year of FHA loans. This is almost the equivalent of printing money. It is putting this billion dollars in circulation to be retired in 20 to 30 years, and the very purpose for which it is used, constructing new buildings that are not needed, will eventually plague us.

Gentlemen, consider these facts about Chicago: In the past 7 years Chicago has had the smallest percentage of increase in population of any large city in the United States, and compared to the increase in population, it has had the largest net increase in housing units of any large city in the United States. In 1940 Chicago had the least number of persons per housing unit of any large city east of the Mississippi River. It now has even more housing per person than it had in 1940.

Veterans have been greatly deceived. While they were at war, those at home spread out, and we will not allow the veterans to have any of the rental-housing units, even though they want and can afford to rent them at higher rents. They must build or buy new units at the false high prices and obligate themselves for years under a large mortgage.

Scranton-Wilkes-Barre, Pa., is the only large metropolitan area in the United States that lost population in the last 7 years. They had a great number of vacancies in 1940, and even though their population decreased 15 per cent in the past 7 years, they now have a serious housing shortage.

The false housing shortage is causing untold maladjustments of our whole economy. Producers of building material, contractors, and labor are charging top prices and profits based upon the seemingly unending demand, which they do not know is false. Removal of rent controls will slow down this false demand and create real competition, thus greatly lowering costs.

We have never before had a housing shortage in the United States. Under free enterprise there was never a time that you could not go into any large city and find a *choice* of apartments for rent for immediate occupancy. Sometimes the price was high and sometimes the price was low, but there was always rental housing available. Our present shortage is artificial and is definitely caused by rent control.

In closing, I want you to know that I am grateful for the time you have given me; yet I have given you only a very small portion of the many facts and figures which I have. This very law which was enacted to help us ease the housing shortage has actually caused it, and is making it progressively worse.

I have used Government figures and I am willing to explain and show them to any of you gentlemen who may wish to verify them. These figures should convince you that this housing shortage can be corrected only by quick, orderly removal of rent control.

The Chairman. Thank you, Mr. Congressman.

Mr. Kunkel. Mr. Busbey, these figures were checked by the Senate committee?

Mr. Busbey. I have been informed that the Senate committee has checked the figures in this statement of Mr. Usher with the Bureau of the Census and found them to be correct.

Excerpt from Statement of John Usher, Hearings before Subcommittee of the Senate Banking and Currency Committee on S. 434, etc., 81st Cong., 1st Sess. at pp. 784-789.

Gentlemen, the summary of these charts show the following changes in these 34 metropolitan areas:

(1) There was an increase of 2,582,000 families, and there were 2,642,000 dwellings available to house them.

(2) 2,018,000 families obtained separate dwellings, and 564,000 doubled up.

(3) All 2,018,000 extra families that obtained separate dwellings obtained them by purchase.

(4) There was an increase of only 105,000 rental dwellings but there was an increase of 188,000 rental units occupied by one person, so 83,000 families who were renting had to buy.

(5) Evidently, most of the extra 564,000 couples who doubled up could not or did not care to buy dwellings because there were still 335,000 unoccupied dwellings (mostly for sale only).

(6) 683,000 dwellings that were rented or vacant in 1940 had been sold and were now owner-occupied. In addition to these, 1,506,000 of the new 1,950,000 dwellings have been sold.

(7) There was an increase of 2,202,000 owner dwellings.

(8) There are 1,205,000 dwellings occupied by one person—902,000 of these are rental units. (The average rooms per rental dwelling is four.)

We would not have had a housing shortage in these 34 areas if rent control had not caused the following maldistribution, spreading out, and hoarding (with 564,000 extra couples doubled up).

	Dwellings
Increase of rental dwellings occupied by only 1 person	188,000
Increase of owner dwellings occupied by only 1 person	101,000
Unoccupied dwellings (mostly for sale only)	335,000
Total	624,000

No Real Shortage.

With 1,205,000 dwellings occupied by one person and another 335,000 unoccupied dwellings there is no housing shortage in these 34 areas. There are only 564,000 extra couples doubled up. Decontrolling the 902,000 rental units occupied by one person would surely vacate enough rental units to take care of all the extra couples doubled up if they desire to rent instead of buying any of the 335,000 unoccupied dwellings (mostly for sale only). These single people could easily get private rooms or share small apartments as they have always done before.

* * * * * *

There are millions of occupants of frozen rental units who can afford and will buy or build new houses if rent controls are removed, and I will quickly show you that these must be the principal people to buy or build any future houses that we may erect in this country. With frozen ren-

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tal unit space costing only half of present home owner space, it is easy to understand that people with money and influence will get the bargain rental units and those without money or influence will be the ones frozen out and few of these able to build or buy.

During the last 2 years we have built more individual homes in the United States than in any similar period in our history. In nearly every large city in the United States newspapers carry columns of ads offering thousands of homes of all sizes and descriptions "for sale". These homes are vacant, ready for occupancy, and yet we talk about a housing shortage. What we really have is a shortage of rental units frozen at a false low price. We shall always have a shortage of $5 bills being offered for $3. There is no shortage of houses for sale. Nearly all the frozen-out people who could raise the money have bought houses. Now, each day, they are becoming harder and harder to sell. The sale of these new homes is fast coming to a standstill because these frozen-out people are the people without money. Today, for the first time in years, we have building mechanics walking the streets without work. Of course, the people with money in the frozen rental units will not move and will not buy or build while they enjoy this bargain housing.

This housing shortage created by law is causing untold maladjustments in our whole economy. Producers of building material, contractors and labor have been charging top prices, and profits, based on the seemingly unending demand which they did not know was false. They have been misjudging maldistribution and hoarding of housing space for a true housing shortage. Removal of rent control will soon cure all these fallacies and bring about a normal, healthy building condition in this country.

PLATE 1.

Table 1.—POPULATION INCREASE BETWEEN 1940 AND 1947, NONWHITE POPULATION, AND CHARACTERISTICS OF PRIVATE HOUSEHOLDS, FOR 34 SELECTED METROPOLITAN DISTRICTS: CIVILIAN POPULATION, APRIL, 1947, AND TOTAL POPULATION, APRIL, 1940

(The 1947 statistics in these tables are subject to sampling variation. Relatively small figures are subject to particularly large sampling variation and should be interpreted with caution. See section on Reliability of estimates in accompanying text)

SERIES P-21 REPORT NUMBER AND METROPOLITAN DISTRICT	POPULATION					PRIVATE HOUSEHOLDS *						POPULATION PER PRIVATE HOUSEHOLD	
	Civilian population, 1947	Total population, 1940	Percent increase, 1940 to 1947[1]	Nonwhite civilian population, 1947		Number		Percent increase, 1940 to 1947[1]	Percent with male head married, wife present	Percent with male head, other marital status	Percent with female head	Percent veterans of World War II among male heads		
				Number	Percent	1947	1940						1947	1940
17-Akron, Ohio	423,589	349,705	21	27,343	6	118,474	95,460	24	82	4	13	19	3.6	3.7
5-Allentown-Bethlehem-Easton, Pa.	337,683	325,142	4	4,371	1	92,442	82,900	12	80	6	14	14	3.7	3.9
6-Atlanta, Ga.	498,109	442,294	13	142,888	29	137,186	119,640	15	75	4	20	24	3.6	3.7
20-Baltimore, Md.	1,306,040	1,046,692	25	294,383	22	354,732	273,780	30	74	7	19	21	3.7	3.8
32-Birmingham, Ala.	502,398	407,851	23	209,760	42	135,432	107,000	27	76	5	19	20	3.7	3.8
1-Boston, Mass.	2,549,700	2,350,514	8	51,750	2	710,550	606,300	17	78	7	20	16	3.6	3.9
24-Chicago, Ill.	4,644,640	4,499,125	3	447,370	10	1,334,025	1,246,680	7	75	8	17	17	3.5	3.6
31-Columbus, Ohio	432,304	365,796	18	40,795	9	123,902	99,860	24	77	6	18	21	3.5	3.7
34-Dallas, Texas	470,052	376,548	25	70,708	15	144,716	108,920	33	78	5	18	27	3.3	3.5
10-Denver, Colo.	471,460	384,372	23	18,496	4	148,412	114,880	29	74	8	18	26	3.2	3.3
19-Detroit, Mich.	2,702,398	2,295,867	18	348,245	13	753,797	598,100	26	82	6	12	18	3.6	3.8
30-Los Angeles, Calif.	3,916,875	2,904,596	35	240,375	6	1,242,750	928,180	34	72	7	21	22	3.2	3.1
3-Lowell-Lawrence-Haverhill, Mass.	347,880	334,969	4	1,333	-	98,487	88,360	11	71	9	20	18	3.5	3.8
14-Memphis, Tenn.	402,752	332,477	21	169,742	41	111,662	92,420	21	74	6	20	20	3.6	3.6
9-Minneapolis-St. Paul, Minn.	1,006,278	911,077	10	11,739	1	287,378	260,620	10	77	6	18	22	3.5	3.5
4-New Haven, Conn.	352,036	308,228	14	11,878	3	97,340	82,940	17	79	6	15	16	3.6	3.7
21-New Orleans, La.	601,608	540,080	11	166,894	28	167,664	146,400	15	72	8	20	22	3.6	3.7
25-New York-Northeastern New Jersey.	12,684,411	11,690,520	9	1,015,002	8	3,601,854	3,181,460	13	74	8	18	16	3.5	3.7
New York Division	9,250,875	8,707,666	6	819,450	9	2,663,550	(2)	(2)	72	8	20	19	3.5	(2)
New Jersey Division	3,433,536	2,982,854	15	195,552	6	938,304	(2)	(2)	78	6	15	14	3.7	(2)
13-Norfolk-Portsmouth-Newport News, Va.	471,034	330,396	43	141,658	30	133,433	82,860	61	76	5	17	21	3.5	4.0
18-Philadelphia, Pa.	3,372,690	2,898,644	16	439,410	13	989,980	764,080	29	78	6	19	16	3.6	3.8
8-Pittsburgh, Pa.	2,100,092	1,994,060	5	131,052	6	557,134	505,780	10	79	7	15	18	3.8	3.9
28-Portland, Oreg.	534,422	406,406	31	11,269	2	181,012	135,380	34	74	9	17	23	3.0	3.0
27-Rochester, N. Y.	468,915	411,970	13	7,098	2	133,414	114,960	16	76	6	17	18	3.5	3.6
11-Salt Lake City, Utah	245,175	204,488	20	4,830	2	68,166	55,200	23	80	5	16	24	3.6	3.7
7-San Antonio, Texas	417,010	319,010	31	25,466	6	113,118	84,240	34	77	6	18	25	3.7	3.8
26-San Francisco-Oakland, Calif.	1,989,891	1,428,525	39	102,465	5	550,187	459,660	41	72	8	20	22	3.1	3.1
16-Scranton—Wilkes-Barre, Pa.	586,458	629,581	-15	564	-	145,334	148,000	-2	72	7	21	15	3.7	4.3
16-Seattle, Wash.	602,910	458,639	33	24,090	4	194,898	154,040	27	74	9	17	22	3.1	2.9
15-St. Louis, Mo.	1,584,044	1,367,977	16	229,470	15	462,616	384,360	20	76	6	18	19	3.4	3.6
23-Toledo, Ohio	383,418	341,663	12	20,196	5	108,766	94,840	15	79	6	15	19	3.5	3.6
33-Tulsa, Okla.	213,276	168,562	13	22,323	10	64,974	(2)	(2)	78	4	18	26	3.3	(2)
1-Washington, D. C.	1,205,220	907,815	33	285,998	24	345,030	237,560	45	71	7	22	24	3.5	3.8
20-Worcester, Mass.	308,569	306,194	1	1,305	-	80,881	78,620	3	77	6	16	15	3.8	3.9
21-Youngstown, Ohio	380,897	372,428	2	29,915	8	99,355	91,720	8	80	6	14	17	3.8	4.1

[1] A minus sign (-) denotes decrease.
[2] Data not available.

*Synonymous with "Private Dwelling", as indicated elsewhere in Census Report.

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PLATE 2.

METROPOLITAN AREA	FAMILIES MARRIED COUPLES NOT HAVING EXCLUSIVE USE OF DWELLING			TOTAL DWELLINGS			TOTAL OCCUPIED DWELLINGS			VACANCIES			OWNER OCCUPIED DWELLINGS			OWNER DWELLINGS OCCUPIED BY ONLY ONE PERSON			FAMILIES OWNER DWELLINGS OCCUPIED BY TWO OR MORE PERSONS			TENANT OCCUPIED DWELLINGS			TENANT DWELLINGS OCCUPIED BY ONLY ONE PERSON			FAMILIES TENANT DWELLINGS OCCUPIED BY TWO OR MORE PERSONS		
	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE	1940	1947	CHANGE
AKRON	6900	8000	+1100	39037	42037	+3000	38434	41400	+2966	603	637	+34	29740	31200	+1460	3052	2943	-109	27738	28445	+707	8694	10194	+1500	2772	3071	+299	5922	7123	+1201
ALLENTOWN-BETHLEHEM-EASTON	6200	11000	+4800	35732	39249	+3517	33636	37411	+3775	2096	1838	-258	26695	27351	+656	1877	2069	+192	24778	25282	+504	4181	4160	-21	2214	2187	-27	4464	5645	+1181
ATLANTA	10300	19000	+8700	121494	134267	+12773	117384	136599	+19215	4057	1968	-2089	38211	44798	+6587	1892	2891	+999	36669	41907	+5238	24173	24151	-22	3676	4888	+1212	7349	9561	+2212
BALTIMORE	20500	44000	+23500	289016	364785	+75769	274679	359506	+84827	17331	10985	-6346	167967	190250	+22283	5168	4779	-389	162799	185471	+22672	106712	124328	+17616	19293	16995	-2298	17994	15728	-2266
BIRMINGHAM	8600	15000	+6400	107211	138282	+29071	104995	135356	+30361	2216	2926	+710	35057	44614	+9557	1277	2077	+781	33780	42537	+8757	31456	34195	+2739	4429	6042	+1399	6479	8700	+2221
BOSTON	27600	49600	+22000	651192	733160	+81968	646279	728556	+82277	4913	4604	-309	219192	241673	+22481	11298	11650	+352	207894	230023	+22129	387087	444135	+57048	32855	48966	+16111	54039	70150	+16111
CHICAGO	73900	128000	+54100	1339245	1449804	+110559	1327217	1429121	+101904	12028	20683	+8655	379329	515998	+136669	13786	23334	+9548	365543	492664	+127121	948088	913123	-34965	75539	149238	+73699	189987	263145	+73158
COLUMBUS	6600	11000	+4400	103363	126178	+22815	99539	123699	+24160	3824	2501	-1323	41158	64493	+23335	2258	2665	+411	38900	61828	+22928	58273	59205	+932	9956	6970	-2986	23783	25494	+1711
DALLAS	8000	12000	+4000	118941	147944	+29003	112235	144228	+31993	6706	3168	-3538	41660	58960	+17300	4076	4664	+588	37584	54296	+16712	66535	66496	-39	5442	4453	-989	6013	7477	+1464
DENVER	4400	9000	+4600	117073	149386	+32313	113911	145208	+31297	5166	4178	-988	47618	77646	+29998	4478	4981	+503	44031	72665	+28634	66293	67193	+900	10223	12592	+2369	16069	18000	+1931
DETROIT	41200	70000	+28800	617778	746214	+128436	594698	750582	+155884	23080	14968	-8112	246994	403126	+156132	7379	8784	+1405	239615	394342	+154727	327778	346439	+18661	32492	32319	-173	50720	54829	+4109
LOS ANGELES	32800	53000	+20200	944472	1251488	+307016	916571	1231508	+314937	27901	19980	-7921	296660	459372	+162712	23324	33326	+10002	273336	426046	+152710	594911	772136	+177225	95089	118514	+23425	146598	169023	+22425
LOWELL	4100	8000	+3900	42149	46293	+4144	36556	39489	+2933	5593	3906	-1687	28715	43219	+14504	2475	3249	+774	26240	39970	+13730	6840	6240	-600	4157	4495	+338	5469	4982	-487
MEMPHIS	8500	15000	+6500	93525	114492	+20967	84319	111353	+27034	9206	3139	-6067	29194	50746	+21552	1499	1984	+485	27695	48762	+21067	42040	44467	+2427	6819	6977	+158	8766	9682	+916
MINNEAPOLIS - ST. PAUL	8700	22000	+13300	266498	296569	+30071	254476	296711	+42235	11838	7826	-4012	130498	166623	+36125	5640	8736	+3096	124858	157887	+33029	123978	129948	+5970	17785	14790	-2995	22469	19329	-3140
NEW HAVEN	3500	8000	+4500	83623	102538	+18915	81468	97340	+15872	6855	4991	-1864	30568	50220	+19652	1672	2449	+777	28896	47771	+18875	50861	47318	-3543	9339	8990	-349	17469	14336	-3133
NEW ORLEANS	12100	18000	+5900	147000	176962	+29962	139026	167996	+28970	4974	3528	-1446	37048	55552	+18504	3220	3800	+580	33828	51752	+17924	87301	88181	+880	11599	10858	-741	16564	16460	-104
NEW YORK	175900	241000	+65100	2924930	3264911	+339981	2740805	3104445	+363640	184125	160466	-23659	766188	1000367	+234179	29776	44516	+14740	736412	955851	+219439	1974393	2104078	+129685	175468	229862	+54394	333109	385796	+52687
NORFOLK-PORTSMOUTH	5200	11000	+5800	66509	89026	+22517	62377	83259	+20882	4132	5934	+1802	30059	45191	+15132	1457	2991	+1534	28602	42200	+13598	32322	37941	+5619	3811	4329	+518	6899	7977	+1078
PHILADELPHIA	59500	100000	+40500	780389	956488	+176099	729778	929805	+200027	50611	26683	-23928	521794	557001	+35207	13609	26694	+13085	508185	530307	+22122	208004	372684	+164680	34902	48597	+13695	59578	73124	+13546
PITTSBURGH	27000	46000	+19000	503058	567477	+64419	478464	554660	+76196	24594	12817	-11777	196594	259435	+62841	9139	11655	+2516	187455	247780	+60325	281870	295225	+13355	49926	46496	-3430	85556	82080	-3476
PORTLAND, Ore.	3600	8000	+4400	141679	161301	+19622	133104	156478	+23374	8575	5823	-2752	76477	112490	+36013	6069	8614	+2545	64499	103876	+39377	48116	46778	-1338	13867	17869	+4002	19899	19669	-230
ROCHESTER	6000	11000	+5000	119880	136326	+16446	113896	132406	+18510	5985	3911	-2074	51865	76055	+24190	2130	2665	+535	49735	73390	+23655	43090	47387	+4297	6977	9220	+2243	15731	19339	+3608
SALT LAKE CITY	2000	4000	+2000	57109	77762	+20653	54891	69561	+13170	2218	1701	-517	36048	49596	+13548	1641	2730	+1089	34407	46866	+12459	20457	19465	-992	2511	2793	+282	3301	2162	-1139
SAN ANTONIO	4700	11000	+6300	86289	116416	+30127	81335	112778	+31443	5054	3638	-1416	34066	68204	+34138	2115	3196	+1081	31951	65008	+33057	47245	44524	-2721	4924	4318	-606	4266	4025	-241
SAN FRANSISCO	10100	29000	+18900	415028	466118	+51090	405978	464778	+58800	9050	1340	-7710	180039	304605	+124566	13996	23399	+9403	166043	281206	+115163	174669	158135	-16534	20071	57835	+37764	24590	29202	+4612
SCRANTON-WILKES BARRE	11600	14000	+2400	47184	49803	+2619	44994	49324	+4330	2890	3478	+588	23778	31990	+8212	3028	5452	+2424	20750	26538	+5788	21216	17338	-3878	3387	4418	+1031	8206	6996	-1210
SEATTLE	3300	8000	+4700	164298	220206	+55908	153039	194878	+41839	11046	7725	-3321	76131	120794	+44663	6521	8712	+2191	69610	112082	+42472	77098	73695	-3403	22036	16474	-5562	29868	25322	-4546
ST. LOUIS	19600	28000	+8400	409734	470306	+60572	385774	460836	+74062	24231	8470	-15761	192764	245284	+52520	2939	11242	+8303	189825	234042	+44217	244169	215552	-28617	26029	26234	+205	33558	33010	-548
TOLEDO	5300	9000	+3700	99611	110976	+11365	95360	108664	+13304	3651	2312	-1339	47864	68272	+20408	2496	3746	+1250	45368	64526	+19158	47229	40232	-6997	4881	4316	-565	6755	6176	-579
TULSA		4000	4000	56147	66402	9555	53742	64498	10756	2136	1559	-1581	23875	38795	+14920	1188	2184	+996	21687	36561	+14874	28132	26148	-1984	982	3018	+36	2774	3048	+274
WASHINGTON D.C.	24300	40000	+15700	355778	380946	+25168	331469	393809	+62340	15184	7526	-7658	99578	135896	+46317	2358	4512	+2154	96220	130930	+44710	178034	217908	+39874	16217	16814	+597	13857	18662	+4805
WORCESTER, Mass.	2400	7000	+3600	79821	83090	+3269	77462	80852	+3390	2619	1238	-1401	28721	31135	+2402	1583	1566	-17	27180	29568	+2388	48129	44707	-5422	2759	2754	-4	4571	3964	-607
YOUNGSTOWN	7000	12000	+5000	92495	100657	+8162	88250	99355	+7105	4245	1302	-57	49464	67089	+17625	1901	2926	+1025	46693	64263	+17570	40256	32837	-7419	4177	4774	+597	4579	5857	+1278
TOTALS																														
COLUMN	1 2 3 A			1 2 3 B			1 2 3 C			1 2 3 D			1 2 3 E			1 2 3 F			1 2 3 G			1 2 3 H			1 2 3 I			1 2 3 J		

THIS TABLE CONTAINS CERTIFIED COPIES OF U.S. GOVERNMENT BUREAU OF CENSUS FIGURES ON HOUSING AND POPULATION PROPERLY ARRANGED TO SHOW THE EXACT STATUS OF OUR HOUSING PROBLEM IN 1940 AND IN 1947. IT ALSO SHOWS THE EXACT CHANGES THAT TOOK PLACE DURING THE LAST SEVEN YEARS, MOST OF THOSE BEING YEARS UNDER RENT CONTROL.

EACH METROPOLITAN DISTRICT INCLUDES THOSE SURROUNDING SUBURBS WITHIN COMMUTING DISTANCE OF EACH CITY EVEN THOUGH THE SUBURBS MAY BE LOCATED IN AN ADJOINING STATE.

IN CALCULATING FAMILIES AS SHOWN IN COLUMNS "G" AND "J", WE HAVE USED THE MOST LIBERAL INTERPRETATION OF THE WORD BY FIGURING FAMILIES TO BE ANY TWO OR MORE PEOPLE LIVING IN A DWELLING; EVEN TWO UNRELATED SPINSTERS OR TWO UNRELATED BACHELORS ARE FIGURED AS A FAMILY.

IN DEFINING A DWELLING USED IN THIS TABLE, WE HAVE ENTIRELY EXCLUDED ROOMING HOUSES, HOTELS, DORMITORIES, LIGHT HOUSEKEEPING ROOMS, TRAILERS, ETC. IN OTHER WORDS, THE FIGURES HEREIN ON DWELLINGS MEAN A DWELLING WITH UTILITIES AND FACILITIES FOR PRIVATE FAMILY LIFE.

TOTAL FAMILY INCREASE = COLUMN A^3 PLUS G^3 PLUS OR MINUS J^3.

AVAILABLE DWELLINGS = COLUMN B^3 PLUS D^1.

DWELLINGS THAT WERE RENTED OR VACANT IN 1940 BUT HAVE SINCE BEEN SOLD = $B^3 - D^2 - (E^3$ IF THERE HAS BEEN AN INCREASE IN RENTAL DWELLINGS) SUBTRACTED FROM E^3.

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APPENDIX B.

(Unless otherwise noted, all citations are to State Department Bulletins.)

I. MILITARY TRANSITIONS

1. *Termination of and/or transfer of powers from wartime agencies to normal peacetime agencies.*

Transferring from Military and other Government Agencies to Atomic Energy Commission property and personnel dealing in fissionable material. 12 Fed. Reg. 37 (1-3-47).

War Damage Corp. Charter amended so as not to have succession beyond 1-22-47 except for purposes of liquidation. 12 Fed. Reg. 407 (1-21-47).

Liquidation of CPA not later than 12-31-47 ordered. 12 Fed. Reg. 554 (1-28-47).

Liquidation of Office of War Mobilization and Reconversion ordered to be completed by 6-30-47. 12 Fed. Reg. 885 (2-7-47).

Abolishes Board of War Communications and transfers records, etc., to Federal Communications Commission. 12 Fed. Reg. 1363 (2-26-47).

Revocation and cancellation of *all* orders and directives of Board of War Communications still in effect. 12 Fed. Reg. 1683 (3-12-47).

Liquidation of CPA accelerated.

Liquidation of OPA accelerated.

Liquidation of Office of War Mobilization and Reconversion. 12 Fed. Reg. 1858 (3-20-47).

As part of program to encourage continued development and voluntary installation of radar as a navigational aid aboard ships FCC announced (2-5-47) 5 year licenses on a regular basis will be issued for operation of acceptable shipboard radar as soon as rules and regulations can be prescribed. 12 Fed. Reg. 1953 (3-25-47).

Removal of Treasury Department controls on importation of *all* currency. XVI, 671 (4-13-47).

United Nations Relief and Rehabilitation Administration operations terminated. XVII, 106 (7-13-47).

Termination of Advisory Committee on occupied areas affairs by State Department Office of Assistant Secretary for occupied areas will take over functions. XIX, 811 (12-26-48).

U. S. Atomic Energy Commission authorized to perform and exercise all functions and powers vested in Secretaries of War, Treasury, and Agriculture, and RFC. 12 Fed. Reg. 1259 (2-25-49).

Termination of Foreign Liquidation Commission on 6-30-49 announced by State Department on 3-24-49. Agency disposed of approximately $10,300,000 (procurement cost) war surplus in foreign areas, realizing 20% thereof, or about $2,000,000,000, for some 4,000,000 types of items on hand. Foreign Liquidation Commission has about $13,000,000 (procurement cost) non-combat war surplus. Predecessor agency began existence February 9, 1945, as Office of Army-Navy Liquidation Commissioner. XX, 503 (4-17-49).

Foreign Liquidation Commissioner of State Department requests bids for several thousand tons of surplus war scrap located on Marshall Islands, bids to be received by 3-5-49. Bidders must warrant scrap will be used in domestic economy. XX, 116 (7-23-49).

2. *Relaxation of controls over alien property, etc.*

Announcement by Secretary of Treasury that Italy, Bulgaria, Hungary and Rumania no longer deemed "enemy nationals" under general ruling No. 11, as part of unblocking procedure. XVIII, 120 (1-25-48).

Jurisdiction over blocked assets transferred from alien property custodian, Treasury Department, etc., to Attorney General as of midnight

9-30-48. Executive Order 9989—13 Fed. Reg. 4891 (8-20-48).

Control of Foreign Assets in United States ended 9-30-48—ending more than 8 years activity of Treasury in this field beginning with Freezing Order of April 1940. XIX, 472 (10-10-48).

3. *Settlement of war claims, lend-lease accounts, etc.*

United States—Polish Agreement on compensation claims. XVI, 28 (1-5-47).

War damage compensation for American Nationals in France agreed upon. XVI, 166 (1-26-47).

Austrian Restitution Laws (three in all) re restitution of property taken under National Socialist Regime to original owners or their heirs. XVI, 669 (4-13-47).

Netherlands—U. S. War accounts settlement signed 5-28-47. XVI, 1131 (6-8-47).

Understanding reached between Allied and Swedish Governments on German holdings in Sweden. (Estimated holdings in Sweden $105,-310,800). XVII, 162 et seq. (7-27-47).

Procedure for filing war claims in Singapore and Malaya set up by Malayan War Damage Claims Commission. XVII, 230 (8-3-47).

Netherlands grants compensation for war damage to American property on basis of equality with Netherlands Nationals. XVII, 332 (8-17-47).

Memorandum of understanding between United States and Italy re settlement of certain wartime claims and related matters. XVII, 372 (8-24-47).

Procedure for filing war claims in North Borneo, Sarawak and Buenei announced by Borneo War Damage Claims Commission. XVII, 648 (9-28-47).

Establishment of "Gold Commission" to determine share of claimant governments in looted gold in Germany by France, United Kingdom and United States. XVII, 706, (10-5-47).

Procedure announced for recovery of identifiable property and registration of claims for war damage to American property in Hong Kong. XVII, 884 (10-26-47).

Protocol signed implementing Paris Conference decision to permit Austria to share in distribution of monetary gold looted by Germany—11-4-47. XVII, 959-60 (11-16-47).

Procedure announced for filing war claims in Greece. XVII, 995 (11-23-47).

Procedure announced for filing war claims in Tunisia. XVII, 1052 (11-30-47).

Procedure announced for filing war claims in Burma. XVII, 1089 (12-7-47).

Procedure announced for filing claims for property lost in Netherlands Indies. XVII, 1090 (12-7-47).

Agreement relating to resolution of conflicting claims to German enemy assets signed by United States, Canada, and Netherlands 12-4-47. XVII, 1192 (12-14-47).

Procedure announced for filing war claims in Poland. XVII, 1196 (12-14-47).

Procedure announced for filing claims of American Nationals against Bulgaria under Treaty. XVII, 1270 (12-28-47).

Protocol signed permitting Italy's participation in distribution of monetary gold looted by Germany. XVII, 1269 (12-28-47).

Procedure for filing declaration of war losses in Belgium announced. XVIII, 279 (2-29-48).

United States and Norway sign lend-lease settlement agreement 2-24-48. XVIII, 306 (3-7-48).

Procedure for filing claims for war damage compensation for American Nationals in Rumania established. XVIII, 316 (3-7-48).

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Procedure for filing claims with Bulgaria, Rumania and Hungary for restoration of legal rights and interests of American Nationals in Hungary as they existed on 9-1-39 announced. XVIII, 356 (3-14-48); and 485 (4-11-48).

Procedure for filing war claims in Luxembourg announced. XVIII, 355 (3-14-48).

United States interim directive issued re restitution of looted property in Japan—3-17-48. XVII, 482 (4-11-48).

Settlement of lend-lease account with Brazil on 4-15-48 announced. XVIII, 552 (4-25-48).

Procedure for filing claims against Italy by United States Nationals who owned property in Italy during war announced and $5,000,000 check presented to and accepted by United States from Italy to satisfy such war claims not otherwise compensated for. XVIII, 584 (5-2-48).

Luxembourg signs agreement relating to resolution of conflicting claims to German enemy assets. Fifth country so to sign. (Canada, Netherlands, and United States signed 12-5-47; Belgium signed 1-5-48). XIX, 25 (7-4-48).

Agreement reached re settlement of lend-lease and reciprocal aid accounts in the United Kingdom. (Modifies and supplements earlier agreements of 12-6-45 and 2-27-46). XIX, 143 (8-1-48).

Agreements signed by United States and Yugoslavia on 7-19-48 re settlement of United States property nationalized by Yugoslavia and other outstanding pecuniary claims and for lend-lease and pre-UNRRA aid to Yugoslavia. Yugoslav assets also unblocked. XIX, 137 et seq. (8-1-48).

Procedure for filing claims for compensation for war losses in Morocco announced 8-3-48. XIX, 211 (8-15-48).

Procedure for filing war claims for looted property in Japan announced. XIX, 245 (8-22-48).

Yugoslavia recognizes as international obligation the dollar bonds issued by predecessor Yugoslav Government, and will consider means of discharging them when her "economic condition—and her foreign exchange position permit." XIX, 301 (9-5-48).

Czchoslovakia settled lend-lease account 9-16-48. XIX, 413 (9-26-48).

Yugoslav deposits $17,000,000 with United States State Department to pay for settlement of American property nationalized in Yugoslavia and other pecuniary claims between two governments. XIX, 413 (9-26-48).

China makes 2nd annual payment of $2,824,930.75 to United States on lend-lease pipeline agreement 10-13-48. XIX, 527 (10-24-48).

Procedure for filing claims with Finland for losses caused by transferring German property in Finland to USSR. XIX, 647 (11-21-48).

Procedure for filing war claims for restitution of identifiable property located in United States Zone of Germany (exclusive of Berlin) announced 11-10-47. XIX, 646 (11-21-48).

Time limit to file with Malayan War Damage Claims Commission for war damage to American property in Singapore and Federation of Malaya informally extended. XX, 87 (1-16-49).

Agreement with Italy completed re settlement of obligations to former Italian prisoners of war under Geneva prisoners of war convention of 1929, and $22,000,000 paid for full release 1-14-49. XX, 116 (1-23-49).

On 3-14-49, settlement of wartime claims and accounts effected between Canada and United States. XX, 397 (3-27-49).

Two agreements signed with France on 3-14-49 finally settling miscellaneous residual financial and shipping matters arising out of operations during and immediately after war, also residual

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lend-lease surplus property claims. XX, 392 (3-27-49).

Agreement entered into with Yugoslavia re settlement of following claims:

(1) U. S. claim for destruction of jeep.
(2) U. S. claim for destruction of Air Force transport plane by gunfire. (Indemnity of $150,000 already paid for loss of life.)
(3) Claims of U. S. Nationals arising from agrarian reforms of August, 1945.
(4) Claims of U. S. Nationals arising from nationalization program.

Yugoslavia pays $17,000,000 to United States and distribution thereof among claimants sole concern of United States under agency set up in State Department as International Claims Commission.

Sets pattern for future claims settlements.

Excerpts from H. Rep. No. 81st Cong. 1st Sess. 6-9-49.

United States, United Kingdom, France and Poland signed protocol whereby Poland is permitted to participate in distribution of monetary gold looted by Germany. XXI, 71 (7-18-49).

Allied Kommandatura of Berlin announces new law for restitution of certain identifiable property to victims of Nazi oppression taken between 1-30-33 and 5-8-45. XXI, 273 (8-22-49).

Laws for filing claims in Germany announced by United States High Commissioner in accordance with laws passed by four German Laender of Bavaria, Hesse, Bremen, Wurthembergbaden. XXI, 591 (10-17-49).

4. *Relaxation of military controls in Germany and Japan.*

Assistant Secretary Hilring elected chairman of Bi-Zonal Supplies Committee (in Germany). XVI, 29 (1-5-47).

Relaxation of restrictions against business and

commercial communication with Germany and Japan. XVI, 74 (1-12-47).

Abolition of Allied Commission for Italy. XVI, 287 (2-16-47).

License restrictions lifted on trading with Germany and Japan. XVI, 496 (3-16-47).

Relaxation of conditions affecting civilian communications between United States and British and American Zones in Germany. XVI, 671 (4-13-47).

Arrangements made for commercial banking in Japan. XVI, 718 (4-20-47).

Provisions for facilitating restitution of foreign property holdings in Japan. XVII, 49 (7-6-47).

Policy decision adopted on reduction of Japanese Industrial War Potential. XVII, 513, et seq. (9-14-47).

Remittance facilities between United States and Japan established through commercial banking channels, within certain limits (up to $1000 per month to one person, etc.). XVII, 1059 (11-30-47).

Regulations relaxed regarding trade with Japan by American businessmen. XVIII, 254 (2-22-48).

First law of currency—reform plan in Germany effective 6-20-48—invalidates old German currency, establishes rules for conversion to new. XVIII, 835 (6-27-48).

International authority for the Ruhr established by Belgium, France, Luxembourg, Netherlands, United Kingdom and United States (6 Power) to make division of coal, coke, and steel from Ruhr as between German consumption and export, etc.,—draft agreement completed at London 12-28-48. XX, 43 et seq. (1-9-49).

Radio Stuttgart turned over to German management on 6-30-49. United States radio officers to continue liaison with stations only as consultants and observers. XXI, 83 et seq. (7-25-49).

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Third Currency Reform Law in Germany announced 6-26-48 setting rates for exchange of old money for new, as well as prescribing procedures re old debts, contracts, wage scales under new currency. (2nd Currency Reform Law did not affect public; merely authorized bank to issue currency.) XIX, 141 (8-1-48).

Interim Office for German affairs established within Department of State to carry out provisions of Public Law 798 of 80th Congress authorizing Department to perform consular functions for German Nationals in United States. XIX, 279 (8-29-48).

United States Zone of Control Law No. 75 issued covering reorganization of German coal, iron and steel industries, effective 11-10-48. XIX, 703 et seq. (12-5-48).

Municipal elections held in Berlin 12-5-48 and participated in by overwhelming majority of population in Western Sector. XIX, 776 (12-19-48).

Supreme Commander for Allied Powers to direct Japanese Government to carry out effectual economic stabilization program with a view to achieving fiscal monetary price and wage stability in Japan. XX, 60 (1-9-49).

Bank of the German States established March 1948 under MG Law No. 60. XX, 126 et seq. (1-30-49).

Military Security Board for Western Zone of Germany established by United States, United Kingdom, and France—1-17-49. XX, 194 et seq. (2-13-49).

United States, United Kingdom, and France reach agreement on various questions relating to Germany 4-8-49, including

(1) Text of occupation statute in new and simpler form.
(2) Basic principles governing Tri-Partite control and occupation.
(3) Plant dismantling.

(4) Prohibited and restricted industries.
(5) Powers, etc. of newly established German Federal Republic.
(6) Establishment of International Ruhr Authority. XX, 499 (4-17-49).

Absentee owned property will be released 5-15-49 to former custodians who managed it at time it was taken into custody by Military Government—announcement made 3-26-49. Involves nearly 8,000 with a total value of RM 70,000,000. XX, 501 (4-17-49).

United States, United Kingdom, and France announce text of agreement on 4-13-49 on limitations to be placed on certain industries in Germany. Agreement is coordinated with that on reparation program. XX, 526 et seq. (4-24-49).

United States, United Kingdom, and France reached agreement 4-13-49 on German reparation program. Revised list of capital equipment to be removed from Western Germany as reparations resulting in certain equipment of 159 plants previously scheduled for dismantling are to remain as they will contribute effectively to coordinated economy of countries participating in EPR. Plants include 32 steel, 88 metal working, 32 chemical, and 7 non-ferrous metals industry. XX, 524 et seq. (4-24-49).

United States, United Kingdom, and France announce agreement on 4-26-49 of basic principles of merger of 3 Western German Zones of occupation. Allied High Commission composed of High Commissioner from each occupying power to constitute supreme allied control to become effective at time of establishment of provisional German Government. XX, 589 (5-8-49).

Agreement completed between United States, United Kingdom, France, and USSR re lifting restrictions between zones of occupation on communications, transportation and trade on 5-4-49. XX, 631 (5-15-49).

Department of State recommends to Far Eastern Commission that Japan be permitted to at-

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tend international meetings and conventions, and to adhere to and participate therein. XX, 635 (5-15-49).

As of 6-21-49—foreign visitors in Germany must live on German economy and pay all expenses in Deutsche marks—receiving currency control books for that purpose. XX, 807 (6-26-49).

Federal Republic of Germany established 9-21-49. OMGUS terminated 9-21-49—Office of United States High Commissioner established 6-6-49 becomes effective. Marks change from military to civilian control of Germany. John H. McCloy, former President of International Bank for Reconstruction and Development named High Commissioner. XXI, 512-3 (10-3-49).

II. International Political Transitions.

1. *Major defense treaties.*

Ratification of Peace Treaties with Hungary, Rumania, Bulgaria and Italy. XVI, 1214 (6-22-47).

Trustee Agreement for the Trust territory of the Pacific Islands approved by joint resolution of Congress (Public Law 204, 80th Congress) and formally approved by President 7-18-47. XVII, 420 (8-31-47).

Inter-American Treaty of reciprocal assistance signed at Petropolis 9-2-47. XVII, 565 et seq. (9-21-47).

Greek Government ratifies treaty of peace with Italy. XVII, 1058 (11-30-47).

North Atlantic Treaty signed by United States and 11 nations in Washington 4-4-49, ratified by Senate 82-13 on 7-11-49. XX, 471 et seq. (4-17-49) and XXI, 148 (8-1-49).

Joint United States-Canada Industrial Mobilization Committee established 4-12-49—function to exchange information and coordinate views of 2 Governments in event of emergency especially in planning for Industrial Mobilization. XX, 537 (4-24-49).

Ratification of International Wheat Agreement signed by Pres. Truman 6-17-49—effective for 4 years—United States and Canada as 2 of 5 exporting countries account for 80% of guaranteed sales. XXI, 21 (7-4-49).

Mutual Defense Assistance Act of 1949 signed 10-6-49. XXI, 603 (10-24-49).

2. *Military, Naval and Air Commissions.*

Military Advisory Mission Agreement between United States and Brazil signed 7-29-48; effective for 4 years renewable at option of Brazil. XIX, 211-12 (8-15-48).

Military Advisory Mission Agreement signed 10-6-48 by United States and Argentina—continues in force 4 years, renewable at option of Argentina. XIX, 494 (10-17-48).

Air Force Mission Agreement with Haiti signed to be in force 4 years with option to renew at request of Haiti—1-4-49. XX, 87 (1-16-49).

Military Mission Agreement signed with Colombia 2-21-49 to be in force for 4 years with option to renew at request of Colombia. XX, 303 (3-6-49).

Naval Commission Agreement with Haiti signed by U. S. 4-14-49—in force 4 years, renewable at option of Haiti. XX, 637 (5-15-49).

Military Mission Agreement between Peru and United States signed 6-20-49. Effective for four years and to be renewed at option of Peruvian Government. XX,.... (.....).

3. *Recognition of post-war Governments.*

Special United States Diplomatic Mission to Nepal to conclude agreement of commerce and friendship and arrange for exchange of diplomatic and consular representatives. XXI, 598 (3-30-47).

First Constituent Assembly of Pakistan convenes at Karachi. XVII, 336 (8-17-47).

Recognition accorded Government of Republic of Korea (elected 5-10-48) as Government en-

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visaged by General Assembly resolutions of 11-14-47 and special envoy with rank of Ambassador named. XIX, 242 (8-22-48).

United States recognizes Government of Republic of Korea—1-1-49. XIX, 59-60 (1-9-49).

Credit of 35 Million Dollars extended by Export-Import Bank 1-19-49 to State of Israel to purchase equipment and services for execution of agricultural projects. 65 Million Dollars earmarked to be available for additional loans for projects in communications, transportation, manufacturing, housing and public works. XX, 173 (2-6-49).

DeJure recognition extended by United States to Transjordan and Israel 1-31-49. XX, 205 (2-13-49).

United States grants recognition to New Syrian Government XX, 637 (5-15-49).

United States recognizes New Syrian Government on 9-20-49. XXI, 515, (10-3-49).

III. International Economic and Social Transitions.

1. *Developments in Trade and Tariff.*

Agreement reached on United States-Swedish import matters. XVII, 42 (7-6-47).

General agreement on tariffs and trades executed on October 30, 1947 by 23 countries including United States, supplemented by exclusive agreement with China and Cuba. XVII, 1005 (11-23-47) and XVIII, 28 (1-4-48).

Treaty of friendship, commerce, and navigation with Italy signed in Rome 2-2-48. XVIII, 219 (2-15-48).

General agreement on tariffs and trade with Czechoslovakia proclaimed 4-22-48, effective 4-21-48. 13 Fed. Reg 2211.

General agreement on tariffs and trade with China proclaimed 5-4-48. (Proclamation 2769-13 Fed. Reg. 467.)

Proclamation issued on general agreement on tariffs and trade with Union of South Africa and

Cuba, proclamation 2791, 13 Fed. Reg. 3372, proclamation 2790, 13 Fed. Reg. 3269.

Proclamation on general agreement on tariffs and trade with India, Norway and Southern Rhodesia. (1st trade agreement in force between United States and above countries.) XIX, 55 (7-11-48).

Proclamation on general agreement on tariffs and trade with Brazil, Burma, Ceylon, New Zealand, Pakistan, Syria and Lebanon. Proclamation 2798-13 Fed. Reg. 4057.

Revised procedures for administration of reciprocal trade agreements program of Trade Agreements Act of 1934 as amended issued by President October 5, 1948. Executive Order 10,004-13 Fed. Reg. 5851.

Economic Cooperation Agreement with Korea signed 12-10-48. XIX, 778 (12-19-48).

Chile signs general agreement on tariffs and trade 2-14-49 and on 3-8-49 by proclamation. United States makes certain concessions to Chile re reductions in tariffs on certain fresh fruits, melons, dried beans, onions; reduction in import taxes on copper-bearing ores and concentrates and copper articles; and duty free treatment for copper and copper ores, crude iodine and nitrate of soda. XX, 363-4 (3-20-49).

2. *Developments in communications.*

International Postal Service order of Acting Postmaster General. Restricted resumption of international mail service to all of Germany. 12 Fed. Reg. 706 (1-31-47).

Postal charges established for service between United States and Ankara, Turkey, United States and Sydney, Australia of foreign countries mail on United States air carriers. Restricted resumption of mail service to all of Germany and of non-commercial printed matter weighing up to 4 lbs. 6 ozs. to United States and British Zone of Germany (excluding Berlin) service to Austria resumed. 12 Fed. Reg. 1604 (3-8-47).

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Direct radiotelegraph service between America and Greece opened. (Formerly routed through London). XVII, 142 (7-20-47).

Radiotelegraph Circuit opened between Rome and New York on 10-29-47. XVII, 911 (11-9-47).

International telegraph service authorized between Germany and rest of world (except Spain and Japan and their dependencies) subject to certain military regulations. XVII, 1191 (12-14-47.)

International telecommunication convention, final protocol and radio regulations annexed thereto ratified by President on 6-18-48. XVIII, 841 (6-27-48).

Radiotelegraph direct service with Saudi-Arabia opened 9-16-48. XIX, 449 (10-3-48).

3. *Developments in Aviation.*

Air Transport Agreement (Bermuda type) signed by United States with Bolivia 9-30-48. XIX, 470 (10-10-48).

Air Transport Agreement with Bolivia signed 9-29-48. XX, 62 (1-9-49).

Air Transport Agreement signed by United States and Finland on March 29, 1949. XX, 466 (4-10-49).

Air Transport Agreement signed between United States and Panama on March 31, 1949. XX, 466 (4-10-49).

Air Transport Agreement to replace 1945 one signed between Canada and United States on 6-4-49. Agreement follows Bermuda type. XX, 766 (6-12-49).

Air Transport Agreement with Dominican Republic signed by United States on 7-19-49. Agreement follows Bermuda type. XXI, 153 (8-1-49).

Air Transport Agreement with Burma signed by United States 9-27-49. (Makes 41st bilateral agreement concluded by United States—follows Bermuda type pattern). XXI, 558 (10-10-49).

4. *Developments in Taxation—Miscellaneous.*

Convention executed October 18, 1946, between United States and France for avoidance of double taxation. XVI, 174 et seq. (1-26-47).

Estate tax convention with South Africa signed (similar to ones between United States and United Kingdom and United States and Canada) signed 4-10-47. XVI, 716 (4-20-47).

Income tax convention with New Zealand signed 3-16-48. XVIII, 486 (4-11-48).

Income tax convention with Netherlands signed 4-29-48. XVIII, 611 (5-9-48).

Income tax convention with Denmark signed 5-6-48. XVIII, 653 (5-16-48).

Ratification of convention between United States and France and protocol thereto modifying same with respect to double taxation signed by President 6-18-48. XVIII, 841 (6-27-48).

Double taxation convention with Belgium signed 10-28-48. XIX, 585 (11-7-48).

Double taxation convention with Denmark and Netherlands ratified December 1, 1948. XIX, 738 (12-12-48).

Extension of double taxation convention with United Kingdom to 20 territories of British Government expected. XX, 207 (2-27-49).

Two tax conventions with Norway signed by United States on 6-13-49 for avoidance of double taxation with respect to income taxes and estate taxes. XX, 830 (6-26-49).

Two tax conventions signed between United States and Ireland in Dublin 9-13-49, for avoidance of double taxation with respect to income taxes and estate taxes.

5. *International Conferences.*

First Congress of International Theatre Institute (20 countries represented) held at Praha, Czechoslovakia 6-28–7-3-1948. See report thereon by Rosamond Gilder. XIX, 488-9 (10-17-48).

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Joint declaration of United States and French Republic Governments issued 9-16-48 re distribution and exhibition of American films and modification of previous understanding of 5-28-46. XIX, 500-1 (10-17-48).

Protocol to bring under international control drugs outside Geneva Convention of 7-13-41 and limiting manufacturing and distribution thereof sent by President to Senate for ratification. XX, 330 (3-13-49).

6. *Expansion of Educational Exchange Commitments.*

Establishment of Foreign Service Institute in Department of State. Purpose to improve skills, broaden understanding, and develop abilities of Foreign Service and Department personnel and other Federal employees requiring instruction in field of foreign relations, by furnishing extensive and systematic training, and by promoting and fostering programs of study incidental to such training. 12 Fed. Reg. 1545 (3-7-47).

First large scale exchange of students and teachers between United States and Europe begun 6-6-47; 2 ships each capable of carrying 925 passengers will make 4 round trips. XVI, 1133 et seq. (6-8-47).

President appoints Special Board to select American students for study abroad under Fulbright Act; 22 countries eligible to participate—amount involved $137,550,000. XVII, 198-199 (7-27-47).

Educational and Vocational Training Institute scheduled as part of American program to accelerate rehabilitation of South Korea. XVII, 231 (8-3-47).

Agreement with China to implement Education Exchange Act signed in Nanking 11-10-47 under which United States Educational Foundation in China established. XVII, 1005-6 (11-23-47).

Agreement with Burma signed putting into operation international exchange under Fulbright

Act, and establishes United States Educational Foundation in Burma. XVIII, 27-8 (1-4-48).

Educational Exchange Program Agreement signed with the Philippines 3-24-48. XVIII, 488 (4-11-48).

Agreement with Greece signed putting into operation the program of international educational exchanges under Fulbright Act 4-24-48. XVIII, 654 (5-16-48).

Surplus Property Agreements on Educational Exchange (under Fulbright Act) with United Kingdom and New Zealand signed 9-22-48 and 9-13-48 respectively. XIX, 473 (10-10-48).

Belgium, Luxembourg and United States sign agreement 10-8-48 under Fulbright Act to put into operation program for educational exchanges. XIX, 528 (10-24-48).

Surplus property agreement on educational exchange with France under Fulbright Act signed 10-2-48. XIX, 650 (11-21-48).

Educational Exchange Agreement under Fulbright Act signed 12-18-48 by Italy and United States. XIX, 809 (12-26-48).

Educational Exchange Agreement signed between United States and Netherlands 5-17-48. XX, 698 (5-29-49).

United States Educational Commission established in France to take responsibility of annual expenditures of $1,000,000 in francs under Fulbright Act. XXI, 263 (8-22-49).

United States signed Educational Exchange Agreement with Iran under Fulbright Act—9-1-49. XXI, 443 (9-19-49).

7. *Encouragement of International Travel.*

Order of Dean Acheson, Acting Secretary of State revoking certain requirements of entry for alien seamen. 12 Fed. Reg. 119 (1-8-47).

Restrictions lifted for pleasure travel to Europe. XVI, 342 (2-23-47).

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Regulations relaxed with respect to American Tourist travel in Austria (except Vienna); not applicable to travel in Austria for personal or business matters. XVII, 45 (7-6-47).

Discussions with interested groups initiated by United States on convention for foreign motor travel to permit motorists to drive in foreign countries. XIX, 446 (10-3-48).

Relaxation of visa restrictions by United States and Belgium as of 10-15-48. XIX, 526 (10-24-48).

As of 10-5-48 visas no longer required for American tourists in Italy and as of 11-1-48 none required for either American business or pleasure travelers; reciprocal provisions made for Italian visitors to United States, subject to statutory limitations. XIX, 526 (10-24-48).

Emigration Regulations for men of military age from United States Zones of Germany and Austria to Israel relaxed. XIX, 386-7 (9-19-48).

Visa requirements for United States citizens with valid passports to United Kingdom for temporary stay waived; reciprocal provision for United Kingdom citizens with valid British passports. XIX, 648 (11-21-48).

Relaxation of nonimmigrant passport visa requirements agreed on between France and United States. No French visa required by bearers of American passports and reciprocal relaxations in accordance with United States statutory restrictions granted bearers of French passports in United States. XX, 457 (4-10-49).

Ireland lifts visa requirements to encourage travel and becomes 11th Marshall Plan Country to facilitate international travel in this way. XXI, 314 (8-29-49).